Building on Strength from the Inside Out

Tax Law
High Technology Law
Financial Services

International Law

Health and Biomedical Law
Message from the Dean:

As we approach the final days of the academic year, I reflect upon the achievements of our Law School community with pride and appreciation. The unwavering commitment to excellence exhibited by so many individuals at Suffolk Law has been inspirational.

This past year was momentous. While we celebrated Suffolk Law's historical 90th anniversary, the faculty and administration continued to prepare for the future by developing innovative programs in the curriculum and by raising funds for our new building. Through your generosity and loyalty to Suffolk Law, we have raised more than half of the capital campaign goal for the new building. I am pleased to report that construction of our new home will commence this summer. Our vision for the future of Suffolk Law is becoming a reality.

While our new building is vital to the growth of this Law School and to its national and international stature, our internal growth is equally important. As you will read in this issue of the Advocate, the faculty has made several important changes to the curriculum over the last few years and proposals for several concentrations have been recently adopted. These advances reflect Suffolk Law's commitment to prepare its students to assume leadership roles in a competitive global marketplace.

One of Suffolk's greatest assets has always been its alumni. As I travel throughout the country and meet many of you at alumni events, I continue to be impressed by the leadership roles that you assume in your communities as well as in the legal profession. I hope that you will share your thoughts on our progress as you are an integral part of Suffolk Law's history and future. I look forward to hearing from you.

John E. Fenton, Jr.
Dean
Volume 27, Spring 1997

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Faculty news:

Law School Appointments

Professor Bernard M. Ortwein, JD '72, has been appointed an associate dean in the Law School responsible for matters relating to academic affairs. Ortwein, who began his career at Suffolk as an associate professor in 1974 and earned tenure in 1980, teaches courses in Evidence, Law and Literature, Lawyer as Negotiator, and Professional Responsibility.

"I look forward to the academic challenges associated with the transition of Suffolk Law School into a new facility poised for competition into the 21st century," said Ortwein.

Ortwein is a member of the Bar of the United States Supreme Court, the United States District Court (Mass.), and the Massachusetts Supreme Judicial Court. His other professional experience includes serving as fact finder and arbitrator at the Massachusetts Board of Conciliation and Arbitration, as legal counsel to the Arlington and Milton Housing Authorities, and membership in the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials.

In addition to his law degree from Suffolk, he received a Bachelor of Arts from the University of Richmond in 1966 and an LLM from Harvard Law School in 1974.

Elizabeth-Ann Foley, a 1990 Suffolk Law School graduate, has returned to Suffolk to serve as dean of students. Foley held several positions at the Department of the Attorney General for the Commonwealth of Massachusetts, most recently chief of the Division of Employment and Training (Business and Labor Protection Bureau).

"It is an honor and privilege to serve as dean of students at Suffolk University Law School. I am committed to fostering a supportive environment in which students can develop a respect for one another and for the law," said Foley of her new role.

Appointed in August 1996 by Dean Fenton to serve in the new position, Foley has become an integral part of the Law School's administration. Reviewing her plans and initiatives, Foley says that she is currently serving as the facilitator in the development of a publication which highlights the scholarly research and writing of Law faculty, and is in the process of developing a class agent system to foster Law alumni involvement with Suffolk. She also hopes to build stronger bonds between students and alumni by including and encouraging student participation in alumni affairs. In January 1997, she instituted a bi-monthly newsletter to improve intra-departmental communication and provide one source of up-to-date information regarding the Law School's student activities.

In addition to her Juris Doctor, Foley received a Bachelor of Arts in 1983 from the College of the Holy Cross.
In remembrance of Alvin Lee Brody
Eulogy by John J. Nolan

Alvin Lee Brody joined our full-time faculty, then eight in number (nine if you counted the dean), in 1963. At the age of 31, he came to us from Western Reserve in Cleveland, where he was an assistant professor. He had previously taught at Rutgers and at Louisiana State, the latter position providing the opportunity to meet Betty Rittenberg of New Orleans, who became his wife.

He was, however, a local boy from Chestnut Hill. He was a graduate of Boston Latin and held three degrees from that institution on the north side of the Charles River in Cambridge (Harvard), a Fulbright Scholar who spent a year in Denmark at the University of Copenhagen, and served as law clerk to two justices of the Supreme Judicial Court of Massachusetts. One of Al’s passions, and clearly his major intellectual passion, was writing, which he did extremely well. He successfully mated concision and discipline with a comprehensive perspective. He wrote not only traditional law review articles early in his career, but later actively participated in litigation.

During the celebrated trial of several finance companies for criminal activity in the Commonwealth in the mid-1960s, he and Edgar Bellefontaine, then and now librarian of the Social Law Library, headed up the research team that provided the legal basis for much of the defense. He was a pioneer in confronting the tobacco industry, writing amici briefs and articles attacking the use of tobacco, particularly in the workplace. He and his wife, Betty, published a book on the rights of non-smokers. Undoubtedly his antipathy to smoking was prompted by his own problems with asthma and his great hypersensitivity to the blue haze generated by burning tobacco sticks. For many years, he was largely responsible for the briefs filed by the busy office of the Suffolk County District Attorney. And of course, his brief-writing and drafting courses here at the Law School set many a fledgling foot on the path of effective legal advocacy.

On a personal level, Al’s formidability with the written word was somewhat at counterpoint with his presence. Reserved almost to the point of being taciturn, he was nevertheless ever sensitive to the needs of others and, when occasion warranted, he was a generous contributor of mature wisdom to the solution of problems that confront us daily. Little escaped his attention, as his pithy comments frequently revealed, and in time we all came to carefully consider his offerings, as they never ceased to merit respect. In short, Al’s was a quiet and unassuming competence.

To the end, Suffolk Law School and its students were at the center of his concerns. In expressing his desire to join the Suffolk faculty at a time when Suffolk had much to be humble about, he wrote in letters to Dean McDermott that he saw us as “a law school on the way up.” He wanted to be a part of that evolution and thought “he could be a credit to Suffolk” here and now, as he certainly was from the time of his arrival.
When Al discovered he had pancreatic cancer—ironically a condition thought by some to be fostered by inhaling tobacco smoke—and that it would be fatal within a short period of time, he reacted with typical calm acceptance and acted to intelligently close down his life as best he could. One of his paramount concerns was wrapping up the summer course he was teaching, and he undertook to make arrangements to videotape the final sessions that he was not to survive. Such was his conscientious dedication.

Al Brody was a good and decent man. He was a good and supportive friend. He was the kind of role model our society so sorely needs. He was one of the “yeomen of the realm” whose collective productive efforts are the essential core—however unsung—of an enterprise and without which it cannot prosper.

It is fitting, particularly because of the lack of any waking or other bereavement ceremony, that we, his colleagues, now take a few moments to recognize Al’s long and positive presence among us and his substantial contributions to the progress and well-being of Suffolk Law School. His abrupt departure came as a jolting surprise to so many of us.

R. Lisle Baker was the featured speaker at the annual meeting of the New England Chapter of the Society of Professionals in Dispute Resolution on January 29, 1997. He also participated in a New Hampshire Bar Association Continuing Legal Education Series held in New Hampshire. Baker’s presentation, “The Scope of Your Practice,” focused on defining the nature of legal work.

Edward J. Bander’s book, The Breath of the Unfe’d Lawyer; Shakespeare on Lawyers and the Law, was published by Catbird Press in 1996. The 172-page softcover is a collection of quotes from Shakespeare’s works with accompanying illustrations by Jerry Warshaw. Following are excerpts:

On the Adversary System
“And do as adversaries do in law. Strive mightily, but eat and drink as friends.”
Taming of the Shrew i ii

On Witnesses
“To show an unfelt sorrow is an office Which the false man does easy.”
Macbeth ii iii

On Associates—Staying with the Firm
“Rather bear those ills we have Than fly to others we know not of.”
Hamlet iii i

Victoria Dodd was appointed to the Executive Committee of the Law and Educational section of the Association of American Law Schools.

Terrence B. Downes published a collection of his poetry, When Winter Takes a Stroll: Reflections on Life and Baseball, in 1996. Downes is an official of the Massachusetts Trial Court.

Dwight Golann was named co-winner of the Center for Public Resources Book Prize, for his book Mediating Legal Disputes (Little Brown/Aspen Law: 1996). The prize is awarded annually to the best book written in the field of alternative dispute resolution (ADR). A specialist in ADR, Golann co-taught in fall 1996 the first course offered in Boston to practicing lawyers on advocacy in ADR. He will also be teaching negotiation and ADR at various corporations throughout the United States this spring and summer.


Marc D. Greenbaum spoke in January 1997 to the Massachusetts Bar Association’s Law Student Committee about the field of labor and employment law. On May 1, 1997, he will moderate a bench-bar discussion at the annual conference sponsored by the MBA’s Labor and Employment Law Section. The panel will consist of Federal District Court Judges, Superior Court Justices, and labor and employment law practitioners.

Charles P. Kindregan, Jr., co-authored Family Law and Practice, Second Edition, a four-volume work published by West Publishing Co. Kindregan also wrote Cutting Edge Issues in Family Law for family court judges, published by Flaschner Judicial Institute (See review on page 46.) In February 1997, he addressed the Massachusetts Academy of Trial Lawyers in a program titled “Beyond Tort,” and co-authored an article on national trends in custody law, which was published in Massachusetts Lawyer’s Weekly on February 24. In April 1997, he addressed a meeting of the American Bar Association on the issues relating to ethics in negotiation, and also moderated a retreat for Massachusetts judges of the Probate and Family Court.

Elizabeth McKenzie was appointed 1997-1998 chair of the Research Committee for the American Association of Law Libraries. She was also elected chair of the Special Interest Section on Legal Information Services to the Public for 1997-98.

**Kentucky**


Robert P. Wasson, Jr., was selected as a member of the board of directors for the Multi-Cultural AIDS Coalition, Project Achieve. Sponsored by the National Institutes of Health, the Project Achieve program is working toward developing an effective AIDS vaccine and protocols for implementing the same. Professor Wasson was also an academic panelist at the Community Unity Boston conference in November 1996. Community Unity Boston is a coalition of organizations and individuals committed to creating a dialogue on reconciliation for gay, lesbian and bi-sexual African-Americans and gay communities.

David Yamada co-authored "Beyond 'Economic Realities:' The Case for Amending Federal Employment Discrimination Laws to Include Independent Contractors," with Lewis Maltby. The article, which focuses on an ACLU proposal regarding federal employment discrimination law amendments to protect independent contractors, was published in the March 1997 issue of the *Boston College Law Review*. 
Law School Recognized in 1996

Indicative of its growing national reputation for excellence, three honors were bestowed on Suffolk Law School in 1996. In the fall, Suffolk was named, for the second consecutive year by a *Massachusetts Lawyers Weekly* poll, number one in Massachusetts. A few months later *Massachusetts Lawyers Weekly* named their picks for top ten best lawyers in Massachusetts, and four of the ten selected were Suffolk Law graduates. They included Stephen P. Bik, JD '71; Gary C. Crossen, JD '77; Sharon F. Fearey, JD '92 and Marianne C. Hinkle, JD '82.

*Dicta*, the student newspaper at Suffolk Law, was ranked third in the country among law school newspapers by the American Bar Association Law Student Division at the 1996 annual ABA conference in Orlando, FL. An article by third-year student Robert E. Harvey of the Federalist Society was submitted by *Dicta* for the Most Humorous Article category and also won third place. Sponsored by the American Bar Association’s *Student Lawyer Magazine*, the contest was open to all 180 ABA accredited law schools.

Donahue Lectures

Since its inception in 1980, the Frank J. Donahue Memorial Lecture Series has brought outstanding experts in various legal fields to Suffolk Law School. This year the Donahue Lectures continued the tradition with speeches on distinct topics by exceptional authorities such as Yale Law School Professor Akhil Reed Amar, Supreme Judicial Court Justice Charles Fried and the Hon. Patti B. Saris.

The 51st Donahue Lecture, titled “Boston, the Writs of Assistance, and the Fourth Amendment,” was presented by Southmayd Professor of Law Akhil Reed Amar. Addressing the capacity audience at the Pallot Library on October 10, 1996, Amar remarked, “It’s good to be back in Boston where I spent a year working as a law clerk to Judge Stephen Breyer, who of course is known to you all not merely as Justice Breyer, but as Donahue Lecturer Breyer.”

In his speech Amar discussed the Fourth Amendment, its significance in 18th century Boston, and the connotation it has today.

According to Amar, “Various forms of searches and seizures were commonplace in common law in early America.” He went on to discuss the effects of the 1761 Writs of Assistance which allowed customs officers to break and enter without probable cause. However, officers were not held liable if the search did not produce the desired results.
A recognized lecturer and legal scholar, Professor Amar is the second youngest scholar ever to obtain an endowed chair at Yale, where he earned both his bachelor's and law degrees. Amar has delivered addresses nationwide on such topics as affirmative action, constitutional criminal procedure, federalism and the jury system. His first book, *The Constitution and Criminal Procedure: First Principles*, was recently published.

The Donahue Lectures welcomed Supreme Judicial Court Justice Charles Fried back to Suffolk on February 6, 1997, when he presented the 52nd Donahue Lecture, titled "Reflections on Crime and Punishment." Fried, who received an honorary degree from Suffolk Law School in 1996, spoke about the American criminal justice system, questioning poor prison conditions.

"In short, prison life is too often a terrifying and degrading experience endured by prisoners for unimaginably long periods of time—six, ten, 20 years—after which society expects the released individuals to lead self-sufficient, constructive and law-abiding lives," said Fried.

Fried argued that the United States makes it more difficult to obstruct crimes and to apprehend and convict criminals than any other democracy. He compared United States prisons and a penal institution in Japan where regulations are stricter, yet conditions are safer. Fried then discussed proposed changes in the rules and regulations of the criminal justice system as a means of improvement.

Justice Fried was appointed to the Massachusetts Supreme Judicial Court in 1995. He is a distinguished author, public servant and internationally respected jurist. His many accomplishments include his service as advisor to such federal agencies as the Office of the Attorney General and the Office of Policy Development for the Executive Office of the President during the Reagan and Bush administrations. He currently serves as Carter Professor of Law at Harvard University.


Judge Saris first joined the federal judiciary in 1986 as a United States Magistrate Judge for the District of Massachusetts, and was appointed Associate Justice of the Massachusetts Superior Court in 1988. She has served as a United States District Court Judge for the District of Massachusetts since her appointment in 1994. She also co-authored "Congress: The First Branch of Government," with The Honorable Abner J. Mikva.

The Donahue Lecture Series was established in memory of Superior Court Judge Frank J. Donahue, former faculty member, trustee and treasurer of Suffolk University. Sponsored by the *Suffolk University Law Review*, the series features three lectures a year delivered by outstanding authorities in the legal field.

Suffolk Students Shine in Moot Court Competitions

Suffolk Student Preempts National Appellate Advocacy

For the seventh time in the last 11 years Suffolk Law School's appellate moot court team advanced to the final round of the National Moot Court Competition, where they competed for the national appellate advocacy title. The Suffolk team of third-year day students Angela Lackard, Bronwyn Roberts and Jacqueline Bussiere vied against teams from 10 other universities, including neighboring Boston College and Boston University, in the Northeast Regional Competition before reaching the finals.

The team was coached by Professors Stephen Callahan and Thomas Finn, who have jointly coached for the last four years. Callahan has coached the National Appellate team for the last 11 years, and has seen seven of his teams advance to the finals.

The National Moot Court Competition is the oldest and largest appellate moot court competition among the nation's law schools. It fosters the art of appellate advocacy among law students while providing a common meeting ground for judges, lawyers, faculty and students. In the competition, 28 semi-finalist teams from across the country presented oral arguments, culminating in a final round before justices from various courts, including the United States Supreme Court.

The competition is co-sponsored by the Young Lawyers Committee of The Association of the Bar of the City of New York and the American College of Trial Lawyers.
While the Suffolk team made a fervent effort at the finals, it was unsuccessful in pursuit of victory. However, it continued the tradition of excellence in advocacy, which has become a trademark of Suffolk Law School.

Suffolk Hosts National “Tournament of Champions” Trial Competition

In October 1996, Suffolk University Law School hosted the 1996 National Institute for Trial Advocacy Tournament of Champions. Called “the nation’s most elite law student mock trial competition,” the tournament brings together high-caliber students from 16 law schools throughout the United States to compete in four days of mock-trial advocacy.

Gregory Flynn, First Justice, Waltham District Court, served as presiding judge at the qualifying trials held at Cambridge Courthouse, as well as at the semi-final and final rounds of the competition, which were held in Suffolk’s moot courtrooms. Suffolk’s team, which has a reputation for excelling in the mock-trial environment, did not advance to the final rounds. The overall tournament champion was Temple University School of Law.

Selection for the tournament is based on the law school’s record for the past three years in two major student trial competitions: the National Trial Competition and the Association of Trial Lawyers of America Student Trial Advocacy Competition.

“The 16 law schools invited to this tournament have clearly shown themselves to be the best of the best—champions of trial advocacy,” said Suffolk Law professor Timothy Wilton, who served as the 1996 NITA Tournament of Champions director.

The Tournament is sponsored by the National Institute for Trial Advocacy. The 1996 law firm sponsors were Boyle & Morrissey; Esdaile, Barrett & Esdaile; Keches & Mallen; McLaughlin & Folan; Mintz, Levin, Ferris, Glovsky & Popeo; and Sarrouf, Tarricone & Flemming.

McLaughlin Competition

The late Walter H. McLaughlin, Sr., was an integral contributor to Suffolk Law School and its Moot Court programs. His legacy at Suffolk lives on through the Walter H. McLaughlin Appellate Advocacy Competition. The annual competition is open to second-year day and evening students, who were named Outstanding Oral Advocate in their legal practice skills sections the previous year.

This year’s competition saw 28 students compete for the championship title in a case that centered around parental rights under the First and Fourteenth Amendments, the Religious Freedom Restoration Act of 1993 and whether condom distribution in public schools violated such rights.

Advancing to the final round of arguments was day student Julie Jablonski, representing the petitioner, and evening student Roscoe Sandlin, representing the respondent. The court ruled for the petitioner, naming Jablonski the 1996 McLaughlin Competition Champion and Sandlin the runner-up.

Goodwin Scholarship Awards $5,600 to Winners

When Harold B. Goodwin, Jr., JD ’80, died in 1988, his friends, family and former classmates wanted to ensure that his love of the law lived on in memory. They accomplished this by establishing the Harold B. Goodwin, Jr., Legal Scholarship Fund, which provides financial assistance to law students who have aspirations of trial advocacy.
Since 1990, scholarships have been awarded to two winners of the Goodwin Mock Trial Competition. The recipients, third-year day or fourth-year evening students, are presented with the Harold B. Goodwin, Jr., Best Trial Advocate award. The winners for the 1996-97 academic year were Holly Broadbent and Alan “Skip” Langton, who each received $1,800 scholarships. Each student also was presented with a framed and numbered Winslow Homer lithograph depicting jurors listening to counsel at the New York Supreme Court in 1869.

This year, the Scholarship Committee also honored both runners-up in the final round of competition. John Doran and Sandra Wysocki each received awards of merit for $1,000.

Since its inception, the Goodwin Scholarship has distributed more than $31,000 to Suffolk Law School students.

**Cella Portrait Unveiled**

A portrait of the late Suffolk University Law Professor Alexander J. Cella now hangs in the Mugar Library in the Donahue Building. The painting, done by Lexington, MA, artist Gloria Petronio, was unveiled during a ceremony held in early December 1996. Nearly 80 guests, including family, friends and alumni, gathered in the Pallot Library for the tribute to their colleague and friend, Al Cella, who died December 2, 1993.

“This is a happy occasion, a time to honor and remember my Dad both personally and professionally,” said Lisa Cella-Labadini, BS ‘84, who spoke for her family at the unveiling ceremony.

The portrait is an enduring memorial to Cella, who was deeply committed to Suffolk and legal education. During his notable career, Cella served on Suffolk’s faculty for 22 years, and was a political adviser to three House speakers and former Senate President Maurice Donahue. Also, he was campaign manager for Hubert H. Humphrey’s presidential campaign in Massachusetts in 1968.

“Professor Al Cella was a beloved friend to thousands of law students who attended Suffolk University Law School. He was a wonderful professor and legal scholar. He was also a man of great intellect, compassion and common sense. He was a valued faculty member whose sound judgment on important issues is missed by his colleagues,” said Dean John E. Fenton, Jr.

The keynote speaker was Nadine Cohen, Esq., a former director of the Fair Housing Project at the Lawyer’s Committee for Civil Rights Under Law for the Boston Bar Association. She currently specializes in housing and employment discrimination in private practice. Remarks also were made by Allan Rodgers, Esq., executive director of the Massachusetts Law Reform Institute, and Suffolk Law School Dean John E. Fenton, Jr.

The first prize, for distinguished paper, was awarded to Christopher W. Deering of the Cumberland School of Law at Samford University in Birmingham, Alabama. His paper, titled “Candor Toward the Tribunal: Should an Attorney Sacrifice Truth and Integrity for the Sake of the Client,” will be submitted to the Suffolk University Law Review for possible publication.

**Students Present Papers at 2nd Annual Convocation**

“Law in a Changing Society” was the theme for the Second Annual Convocation for Law Students, held March 7-9 at Suffolk University Law School.

Forty-three students from 25 law schools across the country presented papers in a forum established by the Suffolk Lawyers Guild to provide an opportunity for scholarly discussion among lawyers in training. Law students’ papers are not often chosen for presentation at professional conferences, but the Suffolk Law School convocation provides an opportunity for current students to present scholarly research before panels moderated by well-known lawyers and legal scholars.

The keynote speaker was Nadine Cohen, Esq., a former director of the Fair Housing Project at the Lawyer’s Committee for Civil Rights Under Law for the Boston Bar Association. She currently specializes in housing and employment discrimination in private practice. Remarks also were made by Allan Rodgers, Esq., executive director of the Massachusetts Law Reform Institute, and Suffolk Law School Dean John E. Fenton, Jr.

The three Scholars’ Papers prizes went to Diane Henkels of Vermont Law School for “Good Neighbor Agreements: Using Contracts to Reconcile Corporate and Community Interests,” Stephanie Barnes Taylor of Harvard Law School for “Limited Liability Companies and Their Use in the Legal Profession,” and Corinne Carey of State University of New York at Buffalo for “Curtailing the Civil Liberties of Drug Users: Federal Welfare Reform as the Most Recent Chapter in the War on Drug (User).”

The five prize winners received commemorative plaques and monetary awards.

Other papers presented in panels addressed a wide range of legal issues. Professor Russell Murphy moderated the panel on “Balancing Public Interest with Private Interest and Judicial Economy.” Among the papers presented was “Rate Setting to Alternate Energy Producers and Cogenerators under PURPA,” by Derege Demissie of Suffolk Law School.

Professor Marguerite Dorn moderated the panel on “Treaties, Trade and Trespass: Boundaries of International Law and Commerce.” “Cyberspace and Beyond: Administration and Regulation” was led by Daniel Greenwood, Esq. Professor Steven Eisenstat was the moderator for “Diagnosing the Law: Regulation of Modern Medicine and Practice;” and “Knowing When to Keep Your Mouth Shut: Advocacy Disclosure and Confidentiality” was moderated by Professor Rosanna Cavallaro.

“Crime and Punishment” was moderated by Professor Eric Blumenson. A panel on “Jurisprudence” was facilitated by Professor Stephen Hicks.

Professor Jeffery Atik led a panel titled “Show Me the Money…”: Regulating Banks.” Suffolk Law student Daniel Lemieux presented to this group “Islamic Banking: The Challenge of Derivatives.”

Professor Kate Day led a panel on “Remedies, Reparations, Representation: Envisioning Equality in a Diverse Society.”

Suffolk Law student Angela Davidovich presented her paper, “Domestic Violence Between Same-Sex Partners,” before the panel on


Professor Valerie Epps led the panel on “The Indian Reorganization Act and the Yugoslav War Crimes Tribunal: Legal Solutions in Sovereign Nations,” and Professor David Yamada moderated “Give Me Your Tired, Your Poor…: A Critique of Legal Services and Welfare Reform.”

“Family Violence: Unveiling Defects in the Criminal Justice System,” moderated by Professor Donald Polk, included papers by Suffolk Law students Melissa Sindeband on “State-Created Danger and the Failure to Protect: Domestic Violence and Police Misconduct,” and Clara Brown Davidson on “Battered Women’s Syndrome.”
Students Make International Impact

Suffolk University Law students are not waiting for graduation to assume leadership roles in the international legal community. Julie Ann Duschka, Victoria Crawshaw and Tammy Wade, all from the Class of '98, hold key positions in the International Law Students Association (ILSA), which has more than 10,000 members worldwide. ILSA is dedicated to promoting awareness of international law and related issues, encouraging communication among law students and lawyers internationally, promoting social responsibility in the field of law, and increasing opportunities for learning about other cultures and legal systems.

As the international vice president of ILSA, Julie Ann Duschka shares responsibility for the association's journal, moot court competition and internship program. She negotiated and signed an internationally recognized memorandum of understanding between ILSA and the ASEAN Law Students Association in the Philippines in 1996, and planned the United Nations World Youth Forum II in 1996. She is currently working on the 1998 UN World Youth Forum III.

Duschka also helped bring five students from a Sarajevo law school to Washington, DC, and Boston in an effort to educate law students from around the world about the situation in Bosnia-Herzegovina. As part of this work, she raised funds to rebuild their war-ravaged law school.

Victoria Crawshaw is the executive director of ILSA's Internships and Studies Abroad in International Law (ISAIL) program. Also, she is national co-director of foreign relations for ILSA. Last summer she worked as a law clerk in the Constitutional Court of Slovenia, editing English translations of court documents, educating court employees about the American legal system, and assisting with an English/Slovene legal phrase packet.

"Working in the Constitutional Court of Slovenia, I was given an opportunity that a first-year student in the United States probably would never have," said Crawshaw. "I worked in a position with some of the most incredible legal minds in the world, so I think ILSA opens doors that might otherwise be closed to students."

Crawshaw noted that international law is difficult to break into as a young attorney. "What we're doing is giving the young students an opportunity to get their resumes together now with international experience, so when they go to firms to do international law, they'll be ahead of the game."

As a result of her experiences, Crawshaw no longer wants to become a criminal prosecutor. Instead, she is determined to pursue a career in international law and must decide whether to work in the public or private sector.

Tammy Wade is the national director of domestic relations for ISAIL, coordinating the one-for-one exchange of law students in the United States and Canada with overseas students. One of Wade's major accomplishments during her tenure has been establishing a website for the ISAIL program. Suffolk University Law School is recognized on that site as a major contributor.

While Wade herself has not studied abroad through ISAIL, she has not missed out on the international experience. "We had two German students work last summer in Boston through the Suffolk chapter. That in itself helps build stronger ties to other international students who one day will be practitioners like ourselves. That's the way to establish a network now," she said.

Wade's goal is to practice law in a firm specializing in corporate work that is international in scope.

Visit the ISAIL website at http://www.kentlaw.edu/ilsa/isail/aboutsail.html.
Wheatley Joins Alumni Relations

The Office of Alumni Relations announced that Larry F. Wheatley, JD ’78, has been appointed director of Law School alumni. Wheatley says he feels privileged to have been appointed director of one of the largest law school alumni groups in America.

“I look forward to working for Suffolk Law, which I feel is truly an alumni law school. In planning the new building, not only did we design one of the most technologically advanced law schools, but we have also looked to the needs of alumni by incorporating into the facility services designed to assist alumni in their practices,” remarked Wheatley. “I encourage my fellow alumni to call, e-mail (wheatle@admin.suffolk.edu) and/or fax me your ideas. Also, be sure to visit our website for the latest information on Suffolk Law School activities at www.suffolk.edu/law. Our goal is not only to be one of the largest law school alumni groups, but also one of the most influential in the practice of law.”

Since his graduation, Larry Wheatley has maintained his relationship to Suffolk, serving as a president of the Suffolk Law School Metro Washington, D.C., Alumni Association and as a phonathon volunteer for the University’s annual giving campaigns. In September 1996, he was elected to serve as clerk of the Law School Alumni Association (LSAA). First elected to the LSAA in 1992, he served two terms before stepping down to devote more time to alumni outreach efforts.
Advanced Legal Studies

Advanced Legal Studies courses provide lifelong learning opportunities for attorneys. The courses provide a thoughtful and academic approach to continuing legal education, however they also address the practical needs of the practicing lawyer and judge.

Admiralty Law for the General Practitioner III
Friday, May 16, 9am–1pm
Mass. Maritime Academy, Buzzards Bay, MA

Tuition: $149
Alumni: $121
(includes continental breakfast and course book)
$69 for course book only.
(2.5 ALS Gold Points)

Topics will include:
Personal Injury Law, Law of Collision, Products Liability in Recreational Boating Crisis, and Marine Insurance—Varieties, Combinations, Coverages

Faculty:
Brian P. Flanagan, Esq., Chair, Flanagan & Hunter, Boston, MA
Warren F. Fitzgerald, Esq., Meehan, Boyle & Cohen, Boston, MA
Carol A. Kelly, Esq., Martin, Magnuson, McCarthy & Kerney, Boston, MA
Mark A. McSally, Esq., Kelly, Kelleher, Relly & Simpson, Providence, RI

Controlling the Information Flow in Corporate Litigation: Strategies & Ethics Attorney/Client Privilege
Wednesday, June 11, 4:30–6:30 pm
Suffolk University Law School, Rm 218, Boston, MA

Wednesday, June 25, 4:30-6:30 pm
Westin Hotel, Providence, RI
(Alumni reception to follow Providence program.)

Tuition: $149
Alumni: $121
(includes refreshments and course book)
(2.5 ALS Gold Points)

Topics will include:
No Contact Rule, Discovery Tools, Work Product and Fifth Amendment

Co-Chairs:
Professors Rosanna Cavallaro and Gerard J. Clark, Suffolk University Law School

Faculty:
David J. Apfel, Esq., U.S. Attorney's Office, Boston, MA
William Browner, Esq., Group Senior Counsel, Fleet Financial Group, Providence, RI
Dennis M. Duggan, Esq., Peabody & Brown, Boston, MA
Maureen G. Glynn, Esq., Attorney General's Office, Providence, RI
Nancy E. Watters, Esq., Tropix, Bedford, MA

Honoring Women Law Graduates "Trailblazers"

Suffolk Law alumnae of the 1940s through the 1970s were recognized at a luncheon seminar titled “Honoring Women Law Graduates ‘Trailblazers,’” in March 1997. Guest speaker Barbara L. Worthen, JD ’81, executive vice president and general counsel for First Data Corporation, discussed the important pioneering contributions made by women graduates of Suffolk Law. One such graduate who was introduced by Worthen is Leila L. Maynard, LLB ’43. In 1943, she was the third woman ever to graduate from the Law School, and in 1970, she was the first woman selectman in New Hampshire.

Looking forward, Dean Fenton, Vice President Marguerite Dennis and Director of Media Services Midge Wilcke talked about the future of Suffolk Law, a school with a student body that is now 55 percent women.
Calendar events:

**5/1**
Thursday, May 1
Annual Law School Alumni Awards Dinner
Omni Parker House
Boston, MA
5:30pm, reception
6:30pm, awards presentation
7pm, dinner
$55 per person

**5/23**
Friday, May 23
Alumni Travel Program
departing for British Isles & Ireland

**5/26**
Monday, May 26
Alumni Travel Program
departing for National Parks Tour

**6/13**
Friday, June 13
Alumni Evening at Pops
Symphony Hall
Boston, MA
8pm performance
floor seats at $58 and $53
first balcony at $42
reception immediately following performance

**6/25**
Wednesday, June 25
Law School Alumni Association Reception
Rhode Island Chapter
Westin Hotel
Providence, RI
6:30pm – 8pm

**7/4**
Friday, July 4
Alumni Travel Program
departing for British Isles & Ireland

**7/7**
Monday, July 7
Alumni Golf Day
Spring Valley Country Club
Sharon, MA
12 noon, shotgun start
$125 per person
(includes greens fees, cart, lunch, dinner and prizes)

**7/24**
Thursday, July 24
Alumni Red Sox Night
Fenway Park
Boston, MA
5pm, buffet
7:05pm, game
$34 per person
(includes buffet and game)

*Save the Date!*
**Saturday, October 25, 1997**
Law School Reunion 1997
Classes of '47, '52, '57, '62, '67, '72, '77, '82, '87, '92
Marriott Copley Place
Boston, MA

**Law School Alumni Golf Day**

For more information on alumni events, contact the Alumni Relations Office at 617-573-8457.
Building on Strength from the Inside Out

This summer ground will be broken on Tremont Street and the eagerly awaited construction of the Law School building will commence. As earth is moved and a structure to house the Law School begins to rise, the community will be well aware of Suffolk's growth and expansion into the next century. But these dramatic physical changes are only the outward manifestations of the greater changes taking place inside the Law School, which will have more impact on Suffolk students and faculty than the new bricks and mortar surrounding them.

Consistent with a long range plan for the Law School, thorough examination of the curriculum has been ongoing. In 1994, the number of hours of required courses was reduced and the opportunity for elective courses was increased. In the three years since Dean Fenton took the leadership of Suffolk Law, a "Base Menu" of required courses was established, while innovations also were adopted, including honors concentrations in high technology and tax law, expanded course offerings in international law, and continuation of the joint degree programs (JD/MBA, JD/MPA, JD/MSIE, JD/MSF).

Further examination continues. Dean Fenton realizes that the legal profession is changing and that legal education must keep pace. Local and national trends indicate that lawyers now have tools available to them that were unimaginable just a few years ago, and they are faced with increasing demands for specialized expertise and training. Suffolk students must be prepared for this new world and be able to compete successfully in the marketplace. While the Law School is beginning to build its new home, Dean Fenton is challenging Suffolk to build on the strengths of its curriculum, its faculty and its location.

"As we prepare for the next millennium, not only is it important that we have a new state-of-the-art Law School facility, but we must offer a cutting-edge curriculum which will prepare our students to compete in an ever-expanding job market," Fenton said.

**Strength in Concentrations**

One of the solutions being proposed is concentrations. Suffolk already offers honors concentrations in two areas—high technology and tax law. These fields
have shown steady growth nationwide, and are areas in which students have voiced interest. Law students in the high technology concentration, in particular, are finding themselves in great demand in the marketplace. Using this as a model, Law School faculty members have developed and proposed three new honors concentrations—civil litigation, financial services, and health and biomedical law.

“The idea is not to throw out the old and bring in the new,” said Professor Joseph Franco, coordinator of the proposed financial services concentration. “What we are striving to do is marry the time-honored teaching of the Law School with increasing demands for specialized knowledge and training on the part of our students and employers.”

As honors programs, the concentrations will provide an opportunity for students to excel and be recognized, not just with a JD, but with a special certificate and designation of their achievement upon graduation. Concentration students will be held to a higher academic standard and will be expected to demonstrate distinguished performance in their specialty area. Each concentration will include a required internship and a thesis. The concentrations will result in an expanded selection of law courses and electives for all students. The Law School curriculum already includes more than 130 elective courses—one of the largest selections in American legal education.

When Professors Joseph Franco, Jeffery Atik and Associate Dean William Corbett designed the financial services concentration, they took into consideration that this field is one of the most dynamic components of our national economy and is preeminent in Boston and the Northeast. Financial products and the delivery of related services are heavily regulated, and growth and innovation in these areas have increased the demand for legal expertise that combines knowledge of fundamental legal and regulatory principles with basic finance concepts. As proposed, the financial services concentration will prepare students to meet these challenges.

“A place like Suffolk can be successful in this endeavor because there is a great demand for financial services and high technology expertise, and there are synergies at the academic level which make course offerings much better and more interesting to students,” said Franco.

Students are not the only ones looking forward to the challenges and opportunities presented by the new concentrations. According to Franco, this is an exciting prospect for faculty members as well—they hope to develop stronger ties to corporate leaders which will enable them to bring an added dimension to the classroom. Adjunct faculty member Peter Ambrosini, managing director of the Investment Company Services Group at Price Waterhouse, provides an example of the caliber of expertise already teaching in the classroom at Suffolk.

An innovative component of this concentration is the interdisciplinary approach that it encourages between the Law School and the Frank Sawyer School of Management. As proposed, students will be granted limited academic credit toward the JD for courses taken in the finance area at the Sawyer School of Management.

“Suffolk is in the vanguard,” said Franco, “however, I do believe that over time there will be greater emphasis in this area, especially for urban law schools.”

Suffolk Law already is well represented in the financial services area. This semester, 11 students, just less than half of those enrolled in Franco’s Mutual Funds course, are working in the field, and seven are employed by mutual fund companies. It is estimated that roughly 10 percent of evening students are either employed in the field or have prior experience. Alumni also are well represented in this industry, and their front-line expertise will be sought in an advisory capacity. Franco plans to contact law alumni who hold key positions in financial institutions like the Boston Stock Exchange, Arthur Andersen and Coopers & Lybrand. Their feedback and advice on the curriculum proposal and business liaisons will be vital to the success of the program.

Another area being proposed as a concentration is health and biomedical law. According to Professors Clifford Elias and Barry Brown, annual expenditures for health care in the United States now exceed $1 trillion and consume some 14 percent of the Gross Domestic Product. Growing controversial issues relating to universal health care and discoveries in the field of genetics and biomedicine call for the kind of lawyer who will be able to negotiate a path through today’s health care and biomedical system. And although Boston is acknowledged as a world leader in health law and biomedicine, at present no Boston area law school offers a concentration in these areas.
Professors Elias and Brown want to remedy this situation. They envision Suffolk Law as an innovator in creating a center for inter-disciplinary discussion among physicians, scientists, legislators and legal scholars to begin to solve some of the public policy issues inherent in this complex field. With international conferences and a speaker series, they hope to address such topics as patient self-determination, HIV disclosure and the right to confidentiality, ethical implications of health care reform and genetic testing. Formation of an advisory committee consisting of Law School graduates and industry leaders also is included in their recommendation.

“It’s obvious that we need lawyers who will be able to navigate through the maze of statutes and regulations—not just for the legal aspects, but you need lawyers to assist with shaping policy decisions,” said Elias.

The Law School already has the teaching resources to establish this concentration. Faculty members who are slated to participate, in addition to Elias and Brown, include Professor Steven Eisenstat, and adjunct faculty members Dr. Max Borten, JD ’87, a medical practitioner and clinical professor at Harvard Medical School, and Dianne Bisonette, JD ’89, a former hospital administrator, advisor to Senator Edward Kennedy and health specialty attorney with Foley, Hoag & Eliot.

Suffolk Law is well known for its strength in civil litigation, and litigation in general. The great number of successful Suffolk alumni in this field is testament to this well-earned reputation. A proposed concentration in civil litigation builds logically on this foundation and provides an opportunity for students to distinguish themselves in this competitive area of legal practice. As created by Professors Timothy Wilton, Linda Simard and Dwight Golann, this concentration will demand that students develop the hands-on skills they will need to litigate, above and beyond mastery of the doctrinal, substantive law. Many of the required courses will incorporate simulated litigation exercises. For example in the course on pre-trial preparation, students will interview a client, research a claim or defense, draft pleadings and conduct discovery. Trial advocacy clinical experience is a required component of this concentration, compelling students to apply their skills in real practice as well.

”We are not trying to turn the Law School into something it isn’t; we are building on our strengths,” said Elias. “I strongly believe we have an obligation to our students not only to help them find employment, but to achieve their fullest potential.”

Students graduating with a concentration in civil litigation will be fully prepared for the challenges they will face in today’s courtroom. “We have decided what students need to know in order to hit the ground running as litigators, in their written work as well as on their feet,” said Professor Wilton.

Building on Experience

While special expertise in a focused area is highly advantageous, it may not be important to every law student. Valuable lawyering experience, however, is on the top of the list for the majority of students. Therefore, Suffolk has made three major advances in the clinical program curriculum.

In 1993, Suffolk opened its S.U. Clínica Legal Program to evening students. “In the past, as a practical matter, evening students were excluded from participating in the civil clinical program in Chelsea because many had work commitments during the day,” said Professor Stephen Callahan, coordinator of clinical programs. Now evening students may attend an evening clinical class and work at the offices in Chelsea one night a week. This gives evening students a chance to get the same experience as day students, meeting with clients, working on housing cases and going to trial in the courts.
The **Intensive Civil Clinic** is a new option which requires a commitment of three and a half days per week, for 12 credits. It is designed to immerse students in an almost full-time clinical experience for one semester at the Chelsea clinical law offices.

"Not only is this good for our students and our program," said Callahan, "it provides more student attorney hours to the community. We can respond to more cases than we have in the past."

Changes in the Law School's **Prosecutor's Program** came recently in response to the state abolition of the de novo system in the District Courts. With fewer trials taking place before the bench, Suffolk students had been exposed to fewer trial experiences. The new Prosecutor's Program curriculum has been expanded from six to nine credits and requires students to work at the courts two days a week in the second semester, thereby increasing their exposure to criminal case prosecution under an Assistant District Attorney. According to Callahan, Suffolk is serving more students, devoting more resources and providing more clinical opportunities than ever before.

The **Legal Internship Program** has also seen tremendous growth and change in the last few years. The most sizable law school internship program in Massachusetts, Suffolk's is now one of the largest in the country. Northeastern Law School's co-op program is comparable in size, but does not include a reflective classroom component, a critical feature of Suffolk's program, says Assistant Director Cheryl Conner who joined Director Gerard Clark in fall 1995. More than 200 students, almost 12 percent of the Law School student body, are participating in internships.

Despite its growth, the program remains structured to provide direction and guidance to each student. With smaller classes, eight to 15 participants in a session, interns receive personal attention and focus from the more than 20 professors, most of them tenured, involved in teaching sections. Dedicated to sharing experience and reflecting on issues faced in the field, the courses allow students to discuss legal ethics, skills and special subject matter related to their internships.

In the last two years, the new focus and structure of this program has begun to pay off. "This academic year, a record number of students is working for judges," said Conner proudly. Some 30 Suffolk interns are located in the United States Court of Appeals, the United States District Court, the United States Bankruptcy Court, the Massachusetts Court of Appeals, the Massachusetts Superior and District Courts, and the state Land, Housing and Probate Courts. And in December 1996, a private-sector internship pilot project was launched, which allows students to intern in corporations and law firms. As Suffolk continues to broaden internship options and experiences, Conner encourages Suffolk alumni to contact her if they are willing to provide a placement for a current student.

An integral part of Suffolk's vision for the 21st century is an evolving, cutting-edge curriculum that distinguishes Suffolk Law School and its graduates. Since Dean Fenton's arrival, he has focused on building upon the strengths of Suffolk's tradition, its faculty, its students and its location. He has sought to be responsive to the realities of a changing legal profession, while continuing to offer exceptional career opportunity to Law School students. Innovations and advances in the curriculum will always stand firmly on the dual foundation of strong legal skills and commitment to public service. The new building on Tremont Street will indeed enhance the Law School's national stature and presence, however, it is the ability of Suffolk to prepare its graduates to serve their clients and their communities in a rapidly changing world that will leave an indelible mark on the landscape.
Preparing Attorneys for the 21st Century

Any forecast of the 21st century legal landscape necessarily includes an ever-growing demand for attorneys with specialized expertise in the creation, ownership, transfer, and resolution of legal disputes involving intangible assets. These intangibles—ideas, discoveries, inventions, product concepts, marketing strategies, and artistic creations—are the new lifeblood of our increasingly global, information-based economy. Consider just a few of the myriad legal, policy and moral issues created by the new information technologies: Should we recognize proprietary rights in human genetic sequences and novel software algorithms? May an individual reserve an Internet domain name that incorporates a well-known brand name of a major corporation? Are a Hollywood celebrity’s image and persona “fair game” for parodic advertisements? Should an Internet service provider be liable for acts of digital copyright infringement committed by its subscribers? May an artist prevent the destruction or degradation of her work, even though commissioned by another?

In order to equip our students better to deal with these and a host of other cutting-edge legal issues raised by information-based technology, Suffolk University Law School launched a concentration in high technology law during the fall semester of 1996. For the first time, Suffolk Law students can select from a comprehensive array of course offerings in intellectual property law (the law of patents, copyrights, trademarks, and trade secrets) and related areas such as cyberspace law. By maintaining a requisite grade point average in a distribution of basic and advanced high technology courses and completing a publishable-quality high technology thesis, students will receive a special concentration certificate and notation on their diploma. More importantly, they will have attained a level of both theoretical knowledge and practical skills in the field of high technology law matched by few other law school graduates across the country.

Genesis and Development

The new high technology curriculum is the brainchild of Suffolk Law Professor Michael Rustad, who serves as the program’s coordinator. A nationally known expert in the law of punitive damages, Rustad has recently broadened his expertise to include commercial transactions in cyberspace and other legal issues involving the Internet. Other full-time faculty teaching in the high technology program include Associate Professor Steven McJohn, who specializes in copyright law, Assistant Professor Anthony Polito, who is an expert in antitrust law, and Assistant Professor Janice Mueller, who specializes in patent and trademark law. Distinguished Professor Benjamin Kaplan, author of a leading copyright textbook and the classic *An Unhurried View of Copyright*, also teaches copyright law. Professor Jeffrey Atik is an expert in international technology transfer, while Professor Lisle Baker’s specialty is the use of technology to enhance legal practice.

To complement the full-time high technology faculty, Suffolk Law has brought together an outstanding group of adjunct faculty who are themselves national leaders in this emerging field. Our adjuncts include general counsels of information technology firms, as well as intellectual property department heads of national law firms. The commitment and enthusiasm of our high technology adjuncts help ensure that Suffolk students receive the most up-to-date legal knowledge and practical skills.

A Three-Phase Curriculum

Suffolk Law’s high technology concentration presently encompasses twenty-one semester courses. Concentration students take classes in each of the following three tracks or tiers:

- **basic courses**, primarily focusing on the legal rules and public policy considerations underlying intellectual property protection in the United States, such as Intellectual Property Survey, Patent Law, Copyright Law, and Trademark Law;
- **advanced courses**, which explore the application of these principles to the international setting and to leading-edge technologies, such as Computer Law and High Technology Law Seminar, International Business Transactions, and Telecommunications Law; and
- **skills courses**, putting legal concepts into practice through drafting exercises, advocacy simulations, and similar hands-on experiences, such as Practice Before the United States Patent & Trademark Office, Counseling the Patent Client, High Technology Practicum, Law Practice Management, Licensing Intellectual Property Rights, and Litigating Technology Disputes.

Each student in the high technology concentration must also complete a thesis of publishable quality. The student will work closely with a full-time faculty member as thesis advisor, generally in the fall semester before graduation. Future plans include a scholarly symposium for the discussion and publication of exemplary student articles.
Career Services' Role
In the Spring 1996 edition of The Advocate, Jim Whitters set forth his vision of the Office of Career Service (OCS) as it moves into the 21st century. He called for the development of a "shared vision" involving the OCS, administration, faculty, students and alumni/ae "working together toward a common goal: assist, educate, guide and mentor our students (and alumni/ae) ... so they will be prepared, as best as possible, to define their career aspirations and thereafter proceed steadily down the path toward success in finding employment commensurate with those aspirations."

The early joint endeavors of the OCS and the high technology faculty represent an excellent example of how the "shared vision" concept can and will operate to the positive benefit of our students. Responding to the efforts of an enthusiastic alumnus, Professor Michael Rustad and Professor Jeffery Atik, together with Jim Whitters, met with the chair of the Intellectual Property Department of a prominent Boston law firm to discuss the emergence of the concentration in high technology Law. The law firm subsequently extended an offer to hire a Suffolk evening division student as a full-time law clerk, including a sizeable salary and full payment of tuition.

Meanwhile the OCS has scheduled luncheon meetings with each Boston law firm having a significant intellectual property practice group. These meetings have given Professor Michael Rustad and other members of the faculty a forum in which to present the current status of the concentration as well as what is envisioned in future years. The meetings also offer an excellent setting for the firms to ask questions and to give advice, based upon their experiences, with respect to the growth and development of this path-breaking program. These meetings have been fruitful; the faculty members have generated enthusiasm and interest by the law firms and encouraged their involvement through hiring of Suffolk students for law clerk positions, sending "in-house" high technology specialists to selected evening division courses, and directly participating in the educational process by joining the adjunct faculty.

In each of the past two years, the OCS has also included in its marketing brochure a descriptive paragraph focusing solely upon the high technology concentration. As a result, more than 6,500 potential employers have been updated annually with respect to the progress of the concentration. Moreover, we are beginning to schedule meetings with alumni chapters where the high technology faculty will describe the specifics of the concentration and enlist alumni to assist students in securing part-time and summer employment as well as full-time employment upon graduation. The initial meeting will be with the Washington, D.C. chapter, where Ann Hagen ('76), Andrea Bernardo ('87), Kathryn Bender ('84) and other chapter leaders have been among our most supportive alumni in relation to providing guidance and advice regarding employment. They report that the upcoming meeting has generated enthusiastic interest among Washington-area alumni.

Looking to the future, it will be the task of the OCS to bring together involved faculty, concerned alumni/ae, and interested potential employers to create a job climate pertaining to the concentration that will fulfill the career aspirations of our students. The "shared vision" will be achieved if the OCS, faculty, alumni and students can coordinate their skills, efforts and goals so that the concentration in high technology law achieves the well-deserved reputation of being one of the very best of its kind in the United States. Based upon the early and enthusiastic response of alumni and potential employers, as well as the extraordinary excellence of our faculty and ever-growing curriculum, the concentration is clearly on target.

Future Vision
Suffolk's high technology faculty contemplates the expansion of the current program well beyond present course offerings. Some of the ideas under consideration include the following:

- Sponsorship of an annual conference in high technology law for practitioners and scholars
- Publication of a high technology scholarly journal
- Endowment of a distinguished speakers lecture series
- Creation of a Summer Institute in International High Technology Law at Suffolk University's campus in Madrid, Spain
- Establishment of an LLM degree in high technology law

As Suffolk Law prepares to move into its state-of-the-art new home on Tremont Street, its academic programs must correspondingly reflect the future of legal practice. We view the establishment of the high technology concentration as a critical step in that direction.

For further information on the high technology concentration, please contact Professor Michael Rustad at (617) 573-8190, Professor Janice Mueller at (617) 573-8171, Director of Career Services Jim Whitters at (617) 573-8148, or visit our Web site at http://www.suffolk.edu/hightech/.
Power of Attorney: Legal Writing for the Practitioner

The Doctrine of the Last Antecedent — Or The Case of The Misplaced Modifier

by Dr. Martha Siegel, Director,
Legal Practice Skills Program
Lawyers must write precisely. They must select verbs, nouns, and adjectives with a critical attention to detail. Although close in meaning, it makes a difference whether one says, states, alleges, claims, or accuses. For example, although close, it makes a difference whether one hits a pedestrian while driving a vehicle, a car, a jalopy, a sedan, a clunker, or a limousine. Although similar, it makes a difference whether one is handed a hot potato or one that is warm, fiery, scalding, tepid, or blistering. Though arguably similar, each set of words carries baggage: the extra load of nuance and context.

Lawyers also need precision when they use one word or phrase to modify another. Misplace a modifier, and the chuckle may be at your client’s expense: Many dogs are killed by automobiles and trucks roaming unleashed. These are the only chocolate chip cookies in a bag that tastes like Mom’s. The work he hoped would satisfy him completely frustrated him.

The power of punctuation also guides us about the meaning of a sentence. Take for example: “Woman without her man is a savage.” Do we mean: “Woman, without her man, is a savage” or “Woman: without her, man is a savage”?

Formalists will immediately invoke the Doctrine of the Last Antecedent.

Antecedents, And the Doctrine of the “Last” Simply put, an “antecedent” is a word or phrase “modified,” explained, or referenced by another word or phrase. A “misplaced modifier” is a word or phrase whose antecedent is not clear to the reader, and we call it “misplaced.” A modifier misplaced usually means a reader confused. The following example prompted a lawsuit.

To qualify for police officer, the candidate must be within the weight range for his or her height, score 85 on the first test battery, score 90 on the special placement battery, and achieve an 85% accuracy score on the shooting range within six weeks of hiring.

The record shows that, although Cadet Able’s weight initially met the requirement, he went on an eating binge, and his weight now exceeds the permissible range. Does Cadet Able have an argument that he was improperly denied his badge?

One may construe this in one of two ways: First Construction

candidate must be within weight range score 85 on first battery score 90 on special battery achieve 85% on shooting range: within six weeks of hiring

Second Construction

candidate must within 6 weeks of hiring: be within weight range score 85 on first battery score 90 on special battery achieve 85% on shooting range

The legal—and grammatical—issue presented is: Does within six weeks of hiring modify just the last element (achieve 85% on the shooting range) or does the phrase A “misplaced modifier” is a word or phrase whose antecedent is not clear to the reader, and we call it “misplaced.” A modifier misplaced usually means a reader confused.

modify all four criteria? Answer: A judge somewhere will struggle with “the Doctrine of the Last Antecedent”—and Cadet Able’s badge will turn on that struggle.

The Doctrine of the Last Antecedent

The Doctrine of the Last Antecedent traces its lineage to one Jabez Sutherland who reportedly cut his interpretative
teeth on the ambiguities of statutory construction. Syntax and diction guru, Sutherland articulated the following rule:

Referential and qualifying phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause ... immediately preceding it.... Evidence that a qualifying phrase is supposed to apply to all antecedents instead ... may be found in the fact that it is separated from the antecedents by a comma.

Applying Sutherland’s Rule, Cadet Able need only “achieve an 85% accuracy score on the shooting range within six weeks of hiring.” Result: Able gets his badge.

Problems with Sutherland’s Formula
Unfortunately, Sutherland’s Doctrine defies traditional wisdom concerning the role, function, and use of commas. First, in the same writing, Sutherland shoots himself in the foot, so to speak. He writes:

The rule [of the Last Antecedent] is another aid to discovery of intent or meaning and is not inflexible and uniformly binding. Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent.

Apparently, a phrase modifies the last preceding antecedent—unless it does not modify the last preceding antecedent!

Second, Sutherland’s Doctrine ignores the rules governing restrictive and non-restrictive phrases. This rule, simply stated requires that: (1) if explanatory information is necessary to identify the antecedent one should not cut it off from its antecedent by a comma, but (2) if the explanatory information is non-essential, redundant, or superfluous, one should use a comma. The first situation is termed restrictive, the second non-restrictive.

To sum up: for restrictive information, omit the comma, for non-restrictive information, use a comma.

This summary, however, contradicts logic of Sutherland’s Rule that, when separated by a comma, a modifying phrase modifies all antecedents. If our rules governing restrictive and non-restrictive phrases provide that a comma separates only nonessential (superfluous) information, then a phrase supplying only “nonessential” information cannot logically assume the dominant role of qualifying “everything” that precedes it in the sentence!

Result in the case of Cadet Able:
Cadet Able does not receive his badge.

Not Surprisingly
Not surprisingly, writers, readers, attorneys, and courts are confused. From a statute governing attorney’s fees, this text prompted a lawsuit:

The court may award the condemnee reasonable attorney’s fees and reasonable expert witness fees actually incurred.

Question Presented:
Does the language authorize payment of “reasonable attorney fees” or only of “reasonable attorney fees actually incurred”?

Holding:
It is well settled that the primary consideration on construing the provisions of a statute is to determine the intent of the legislature, and where possible this intent should be gathered reading from the language contained in the statute itself....A plain reading clearly indicates it was the intention of the legislature to provide reasonable attorney’s fees, and the phrase “actually incurred” was intended to modify reasonable expert witness fees’ and not “reasonable attorney’s fees.” Construing the statute in this manner is consistent with the applicable rule of statutory construction which provides that a qualifying or conditioning phrase (i.e., “actually incurred”) relates solely to the last antecedent (i.e., “reasonable expert witness fees”).

The United States District Court for the District of New Jersey faced a similar interpretative challenge with the following text:

The plaintiff could ship “[b]etween points and places in Connecticut, Pennsylvania, New Jersey, and New York within 100 miles of Columbus Circle, New York, including New York, N.Y., on the one hand, and on the other, points in Connecticut, Delaware, Maryland, Massachusetts, Pennsylvania, New Jersey, and Rhode Island.”

Question Presented:
Does the 100 mile limit modify only the last listed, the State of New York, or does it modify all of the states in the list?

Holding:
As a matter of grammatical construction, there can be no question but that the 100-mile provision in ... the Certificate applies only to New York. Whether the grammatical rule be designated as the ‘Doctrine of the Last Antecedent’ or as matter of common sense, the absence of a comma after the Certificate’s first reference to “New York” indicates most clearly that this is the case.
Help!
To write with precision and clarity is the attorney’s goal and task. Here are three guidelines to guide us as we use words to guide—or bind—others.11

**Repeat the modifier.**
Cadet Able: To qualify he must weigh ... within six weeks of hiring, score 85 ... within six weeks of hiring, score 90 ... within six weeks of promotion, and achieve 85% ... within six weeks of hiring.

**Place one modifier first, “up front” in the sentence.**
Cadet Able: Within six weeks of hiring, a cadet must achieve the following for promotion: (list the criteria).

**Specify by limiting or expanding “universal” qualifying words.**
Cadet Able: To qualify for promotion, a cadet must qualify in all of the following categories within six months preceding his promotion: (list criteria).

Finally, in service of antecedents, whether first or last, we can adapt Roy Rogers’ famous song: “Happy Trials to you until we meet again.”

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2 Terry LeClercq, “Doctrine of the Last Antecedent: The Mystifying Morass of Modifiers,” 2 Legal Writing 81, 85 n.10 (1996). This article reports on a much longer—and more technical discussion of this topic—written by Terry LeClercq and appearing at 2 Legal Writing, The Journal of the Legal Writing Institute 81 (1996). The research and substance of the discussion are LeClercq’s, although I have rephrased some points, omitted others, and added bits and pieces of my own.
3 Id. at 81. Although embellished, these facts are LeClercq’s at 81-82.
4 Id. at 86, 87.
5 Id. at 87, quoting Sutherland, Sutherland on Statutory Construction § 267.
6 Id. at 87.
7 Id. at 106, citing In re Renton, 485 P.2d 613, 614 (Wash. 1971).
8 Id. at 108, citing In re Renton, 485 P.2d at 614-615.
10 There was a dissent, which argued that the common understanding of the parties was clear—and to the contrary. See McCormack, 298 F. Supp. at 44-45.
11 Id. at 99. The substance is LeClercq’s. I have changed the format of the examples, contributed some of my own terminology, and added a phrase to the third example, a phrase I think makes the text even more specific.
12 Copyright © 1996 by Dr. Martha Siegel. All rights reserved. No part of this document may be reproduced by any means without the express written permission of the author.
Preparing the Law Library
for the A.B.A. Inspection, April 1997, ...and Beyond

By Betsy McKenzie, JD, MS, Library Science,
Director, Law Library
Since coming to Suffolk University's Law Library in June 1996, I have spent much of my time preparing for our upcoming accreditation inspection in April 1997. In preparation for these regular inspections, law schools prepare self-studies. The purpose of the study is two-fold. The study provides information to the inspectors. But a self-study also provides the law school community an opportunity to examine its current situation, measure past efforts, critique itself and plan for the future.

In August, Professor Bernie Keenan, chair of the ad hoc committee for accreditation, began the process of preparing the self-study. Professor Joe McEttrick and I have worked on the portion dealing with the library. This has been an exhausting, but very quick way to learn a lot about the school and the library and understand some of the history that led to the current situation. This has also been a fine way to become more aware of the ABA Standards and the AALS Regulations. These provide the guidelines against which law schools are measured by those two organizations. They reflect the goals and values of those organizations for legal education, and provide useful guidelines for law school administrators as well. Hereewith is a summary of the main points of the library portion of the self study.

Library Staff
Suffolk University Law School actually began preparing for the upcoming inspection as soon as the last inspection was over in 1990. At that time, my predecessor, Michael Slinger and the Dean Paul Sugarman began working to improve the law library. Using the inspectors' comments and observations, and the ABA Standards as guideposts, they began increasing the size of the library staff and budget. The results have been an ongoing process of improvement. Students, alumni and faculty have benefitted from a larger staff to assist them and more new titles purchased. The improvements are ongoing, as we continue adding and improving services, and improving the library collection.

Staffing now consists of 10 FTE professional staff and 14 support staff. This is a 50 percent increase in total staff since 1989, and a 25 percent increase in professional staff. (See accompanying chart.) The Law School is requesting the addition of another full time, professional librarian for the Technical Services Department, which handles the ordering, processing and cataloging of books.2

Growth of Library Staff

<table>
<thead>
<tr>
<th>Year</th>
<th>Professional Staff</th>
<th>Support Staff</th>
<th>Total Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>8</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>1990-91</td>
<td>9</td>
<td>9</td>
<td>18</td>
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<tr>
<td>1991-93</td>
<td>9</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>1993-96</td>
<td>10</td>
<td>14</td>
<td>24</td>
</tr>
<tr>
<td>1997-</td>
<td>11</td>
<td>14</td>
<td>25</td>
</tr>
</tbody>
</table>

Reference librarians staff the main library, Mugar, from 9am until 9pm during the regular school schedule.3 Full-time employees staff Mugar from 8am until 10pm. Student supervisors staff the circulation desk from 10pm until 11pm, when the library closes. On Saturday and Sunday, reference librarians are available from 9am until 5pm. Full-time staff cover the circulation desk until 10pm. Student supervisors cover the desk from 10pm until closing.

The Pallot library hours mirror the Mugar library closing times across weekends, holidays and summer break. A professional librarian staffs Pallot weekdays 30 hours a week between 9am and 5pm twice a week, and 9am to 2:30pm three days a week. A full-time staff member is available in Pallot until 5:30pm. Student supervisors finish the hours in Pallot. Reference librarians are available to answer questions in the Pallot during all hours that reference is staffed in Mugar.

Description of Library Collection
Suffolk University Law Library holds approximately 300,080 volumes and volume equivalents, and 111,557 titles. Of that number there are about 3,830 active serial titles. These numbers are fluid as the library purchases new titles and serials in support of new emphasis in tax, finance and high technology law.4 At the same time, the library is weeding materials judiciously, in preparation for the move to the new building, and to remain within budget.

While the Suffolk Law Library collection is rich enough for the library to be a net lender in interlibrary loan5, there are stringent limits on how large a collection can really be managed in physical formats. Space at
Suffolk is considerably more costly per square foot than space at less urban and less expensive locales. The storage costs for books on each of Suffolk's shelves is quite high, because the cost per square foot of downtown Boston real estate is quite high. Thus, the library will need to balance the need for immediate access to materials and faculty comfort with electronic formats against the cost of buying and housing materials. As the faculty has voted to develop a high technology law program, this may be another reason to move to more electronic formats. Another advantage of electronic formats is that faculty and students could do research in their offices, workplaces and homes, rather than coming into the library itself.

The total volumes held by our law library is one way to measure the school's commitment to maintaining a high-quality law school.

**Suffolk University Law Library—Total Volumes**

<table>
<thead>
<tr>
<th>Year</th>
<th>Volumes</th>
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</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>267,562</td>
</tr>
<tr>
<td>1990-91</td>
<td>273,059</td>
</tr>
<tr>
<td>1991-92</td>
<td>282,128</td>
</tr>
<tr>
<td>1992-93</td>
<td>296,945</td>
</tr>
<tr>
<td>1993-94</td>
<td>277,873*</td>
</tr>
<tr>
<td>1994-95</td>
<td>277,631</td>
</tr>
<tr>
<td>1995-96</td>
<td>300,080</td>
</tr>
</tbody>
</table>

*This sudden drop in volume count reflects in large part the weeding of microfiche and microfilm sets of old New York agency decisions. There was an enormous drop in microform volume equivalents in this same year. While there was also a drop in book volume count in that same year, the largest part of this overall reduction in volume count—about 19,000 volume equivalents—comes from the fiche reduction.

There are 11 Westlaw computers for student use in the Permanent Learning Center on the fifth floor of Mugar. There are 11 Lexis computers in a second Permanent Learning Center. In the Mugar reading room, there are two stand-up computers for accessing Westlaw and Lexis. These two do not have printers attached.

There will soon be another multi-use computer available in the Pallot Library. This computer will be connected to the Law School network. This computer will provide one more access point to students for Lexis, Westlaw, word processing and the Internet. Government information users will have priority, but students may use the computer when it is not busy. While the Mugar Library houses a computer lab for students, these seven computers are owned and maintained by the Computing Services Department.

**Assistive Technology**

In a small group study room of the Pallot Library is an assistive technology workstation. This consists of a personal computer, owned by the Computer Resource Center, connected to a scanner from the library. There are speakers and screen reading software so that visually impaired, dyslexic and hearing impaired students can use the workstation to do research, write papers and read for class. This was a joint project between the Computer Resource Center, the Dean of Students and the Law Library. The computer is secured so that only students needing the assistive technology can access the computer. The study room, however, is still available to the general student population. Students needing the assistive technology have priority in signing up for blocks of time, but when the room is not otherwise occupied, it may be signed out by groups as our other study rooms.

When the new building is finished, there will be many study rooms in a variety of sizes, but now, group study space is at a premium.

**Laptops for Check-out**

A new development is the availability of six laptop computers for check-out in Mugar. Bought by Computer Resource Center, the laptops will be maintained jointly by the Law Library and the Computer Resource Center. Mugar has been wired with nine connections to the Law School network. Students can check out the laptops for four hours at a time; use is restricted to the Mugar Library for security purposes. Word processing software will be loaded on the laptop and the network will give access to Lexis, Westlaw and the Internet. This is a pilot program and may be expanded if it is successful.
Library Integrated Catalog

In 1993 Suffolk bought the Innovative Interfaces integrated library system. The system was bought in partnership with Suffolk's Sawyer library, which serves the undergraduate and the business schools. The system hardware is housed and maintained by the law library. The result of the shared catalog is that users see immediately the holdings of the Sawyer library as well as the Law Library. The display is clear and it does not seem to cause confusion among users to have both libraries' holdings displayed.

The public access catalogs are available in the libraries, or by dial or telnet access. The library recently set up the World Wide Web module to make the catalog even more widely accessible. The addition of the gateway module makes the public access catalogs more useful for one-stop research. The public access catalogs and circulation module have been in use since the earliest days of the system and seem to work well. All circulation transactions are performed using the system.

Library staff are investigating ways to maximize the usefulness of the integrated library system. Retroconversion efforts continue, steadily increasing the percentage of total holdings in the online public catalog. Older materials that were bought before computerized cataloging must now be re-cataloged to make them show up on the new computer catalogs. There are six Public Access Catalogs in the Mugar library, and one in the Pallot. There is an additional PAC in the faculty library.

Other Library Technology

There is one local area network, operated by the Computer Resource Center in the Law School. Computers on faculty desks and in the computer labs are connected to the network. The computers on library staff desks are not connected to the network. The network includes several word processing packages, Lexis, Westlaw, Internet access, among other software.

There are six CD-ROM players for individual users in the library, one in the faculty library, and four in faculty offices. At this time there are no multiple user stations or network. The library is investigating loading the CD-ROM databases, including new additions, on its web site, requiring a password to access the database. Another possibility is to add a CD-ROM tower to the existing law school network. Meetings are scheduled with Sawyer librarians and university wiring personnel to study ways to share access to CD-ROM databases where our licensing agreements would allow broader access.

The library has four microform readers and two microform reader printers. Discussions are under way with the company providing photocopies regarding the addition of equipment that renders microform documents as computer-readable files. This is especially interesting since we currently have a blind law student. The addition of microform conversion equipment would make microforms available to this and other visually impaired students.

The library has a number of videotape viewing stations in the Pallot library. This is a growing part of the collection, including in-house videos of classes and speakers, commercial videotapes and a handful of interactive videos. The microforms reader-printers and video players are located in the Pallot library. This occasionally causes a problem since the Pallot is a favorite reception area. There are few meeting spaces available in the current building that can accommodate a large group for a social event. The library has experimented with total banning of receptions, but has compromised by trying to limit the number of receptions. During the receptions, of course, nobody can use the Pallot as a study area or for research, microforms or video access. The present policy is to limit use of the Pallot to two receptions a month, and to give priority to law school groups in the reservation process.

The Suffolk Web site is maintained and updated by the Director of the CRC and by the Computer and Electronic Services Librarian of the Law Library. The library is especially proud of the work done by Computer and Electronic Services Librarian Dominick Grillo to mount the Current Index to Legal Periodicals (CILP) on the Web site. The faculty can search it by keyword, and can point and click to select articles to be copied by the library. The request is sent by e-mail automatically to the Reserve/Circulation Assistants, with the faculty name included. Faculty preferring to receive the CILP in paper can do so. Their secretary can pick up the weekly issue on disk from the Circulation Desk and print it with WordPerfect at their desks. The joint effort has saved the library approximately $7,000 compared to the 84 paper subscriptions maintained previously. The macros are being made available on request to other libraries and to the NELLCO consortium.
Needs for a New Building

Currently, Suffolk splits its collection and librarians between two libraries, the Mugar and the Pallot. The total square footage of both libraries is 35,524. There are currently 29,955 linear feet of shelving capacity in both libraries. Of that total, only 3,045 linear feet are unoccupied. There are 52 carrel seats, and 502 non-carrel study seats available in the current libraries, for a total seating capacity of 554 seats inside the library. The space between the entrance for Mugar and Pallot includes the Masterman Lounge, which contains five sofas and chairs to seat 48. The total study area in and immediately around the library allows seating for 602. Much of the seating is less than ideal, in dark corners, cramped nooks and windowless corridors.

The new building will include all the space on the sixth floor, and all of the fifth and seventh floors for library space. The new library will have copious window space, mostly reserved for seating along three sides of the new building. Three hundred and forty-four carrel seats and 536 non-carrel seats are planned in the new building for total seating for 880. There will be 96,700 total square feet devoted to library space in the planned building, with 56,965 linear feet of shelving. Twenty percent of the space in the new building will be capable of being converted to compact shelving, should the need arise. The amount and quality of space dedicated to library use in the new building is a testament of the administration’s dedication to improving current library space problems.

The new building includes wiring for electric and data ports throughout the library, as well as the rest of the building. There should be the capability for computer access at every seat, though policy may dictate closing some areas to laptop use. The plans also include a much larger Westlaw and Lexis Permanent Learning Center (sixteen computers in each), and a bibliographic classroom with twenty-four computers as well inside the library. The new building will also ease the current shortage of group study area. Current plans call for 21 small group study rooms, six large group study rooms, and two student lounges inside the library.

Conclusion

The preparation for our upcoming inspection really began as soon as the last inspection team left in 1990. The library has been constantly improved for all its users by this ongoing process. The process continues now, and will continue after the inspection in April. Suffolk has a strong library with excellent staff now; we all are working to maintain our current quality and to improve on all fronts. I hope you will visit the Suffolk University Law School Library and see for yourself; I also hope you will visit after we move into our new quarters on Tremont Street, in 1999.
The American Bar Association visits law schools for accreditation purposes, with an inspection team. Included on teams are administrators, professors and law school librarians. One member of the inspection team will also represent the Association of American Law Schools. Members are selected from a pool of volunteers, attempting to match types of law schools and programs.

ABA Standard 605 and Interpretation 605-1 specifically mentions technical services as well as public services functions when giving examples of "appropriate services."

The schedule assures that "at least one professional librarian is in attendance at all times when there is substantial use of the library" as required by AALS Regulation 8.2 c.

The Director is encouraging faculty to give her a list of materials, with some prioritization and ranking by the faculty member, in order to best use the budget to support faculty and student teaching and research needs. ABA Standard 606 (a). In preparing to weed and evaluate the update schedule for expensive sets, the Director is planning to survey faculty by subject area, asking for recommendations. To date the tax faculty, in particular, have been very helpful in eliminating certain little-used looseleaf sets. This has freed up budget to acquire new tax materials that the faculty prefer.

Interlibrary loan allows patrons at Library X to borrow books from Library Y; Library Y actually checks its book out to Library X which is then responsible for returning the book in good condition and on time. Library X then loans the book to its patron.

This may fit under the rubric of ABA Standard 606 (A)(3), "serve the school's special teaching, research, and service objectives." One of the advantages of presenting a variety of CD-ROM and online resources is the chance for students to learn to use and to compare formats so they can make better decisions when they build their practice collections.

The library is attempting to provide computer resources that are as flexible as possible. This addresses the twin issues of space allocation for computer labs and the paucity of computer resources for so large a student body. ABA Standard 701 calls for "physical facilities and technological capacities that are adequate both for its current program of legal education and for growth...in the immediate future."

AALS Regulation 8.5 clearly envisions such access to support materials from non-law disciplines. Further access to other libraries is accomplished through the NELCO consortial agreements, allowing access to regional law libraries with a letter certifying need from one's home librarian. While Suffolk holds a core collection, as described in ABA Interpretation 606-7, with sufficient duplication, and secondary works, there are always times when the necessary item is off the shelf or when a researcher needs items in areas the Suffolk collection does not support. The Director encourages faculty to identify areas of need so that such occasions are rare.

ABA Standard 701 on physical facilities and technological capacities, with Interpretation 701-4 calls for the law school to retain exclusive use of its physical facilities. The director of the Law Library retains the exclusive power to permit use of the Pallot Library for receptions. In the new building, there will be several spaces outside the library designated for social events. However, there is also a "President's Room" on the top floor of the library, overlooking the Boston Common, that will undoubtedly be used for receptions. But the library itself will not need to be closed for such events.

Suffolk is fully aware of the AALS Regulation 8.3 which requires seating accommodations for 65 percent of a law school's largest division, and the ABA Interpretation 703-1 requiring seating for fifty percent of the larger division.

Both in the current building and in the new building, study rooms are available all hours that the library is open, as required by ABA Interpretation 703-2. In the current building, however, the fact that the study rooms are all in the Pallot Library complicates availability, since the Pallot is subject to closure for receptions. We look forward to the new building, which should ease many problems.
Declaring IOLTA Unconstitutional

A Conversation With Michael Mazzone

By Charles E. Rounds, Jr., Professor of Law
the Advocate: On September 12, 1996, the United States Court of Appeals for the Fifth Circuit effectively declared IOLTA unconstitutional (Washington Legal Foundation v. Texas Equal Access to Justice Foundation, 94 F. 3d 996 (5th Cir. 1996)). IOLTA is an acronym for a scheme known as Interest on Lawyers Trust Accounts. You were, and are, one of the parties and one of the lawyers on that case. Before taking our readers behind the scenes of this landmark case, tell us, if you would, your Suffolk connection.

Mazzone: I started at Suffolk Law School in the day division, in the fall of 1979. After a year, I ran out of money so I switched to the evening division. During the day, I worked for insurance brokers, and later, ran a legal research business to pay tuition and expenses. I consider myself in the Class of 1982, but my diploma says February 1983.

the Advocate: How did a Boston boy end up in Texas?

Mazzone: After graduating from college I began to read the fiction and non-fiction of the writer and philosopher, Ayn Rand. Her writing has had a tremendous impact on my thinking. When I was at Suffolk I became exasperated with the politics in Boston. People seemed to be spending their whole lives arguing about how to live, rather than just living their lives. I also wanted to live where people had more freedom—and did less arguing about the rules of the game. I was also determined to be as productive as a lawyer could possibly be—and I mean “productive” literally. I wanted to work for a company that produced things from natural resources. So, when Judge McNaught announced in evidence class that in Texas if an intruder comes into your home through the front you do not have to run out the back door (as you had to do in Massachusetts); that instead you could defend your home, I decided that Texas was the place for me.

Soon thereafter, I was hired as a summer law clerk at Exxon Company, USA. Although the politics here are as bad as in Boston, we are somewhat freer: Houston just rejected zoning again in a voter referendum and the state legislature recently passed a law allowing citizens to carry handguns.

the Advocate: You are a shareholder in the Houston firm of Dow, Cogburn and Friedman, PC. Tell us about the firm and what you do there.

Mazzone: The firm was founded in 1923 by Harry Dow. We are widely regarded as one of the best real estate firms in the state, and the American Lawyer cited us as one of the country’s “great boutique firms” for our real estate expertise. We have approximately thirty lawyers, about one-half of whom do transactional work and the other half do litigation and trials. I am a trial lawyer and an arbitrator. I represent parties in environmental litigation, construction disputes, commercial landlord and tenant matters, and other disputes. I serve on the American Arbitration Association’s panel of neutrals. I am an adjunct professor at the University of Houston Law School (I teach pre-trial litigation). I am the book review editor of The Houston Lawyer (a publication of the Houston Bar Association), and I am the President of the Association for Objective Law, an organization of lawyers, law students, and others whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system. In my spare time, I fight against ideas I do not agree with, like IOLTA and mandatory pro bono.

the Advocate: Have you been involved in any other high-profile cases?

Mazzone: I intervened as a defendant in Gomez v. State Bar of Texas, a case in which plaintiffs sought to compel the State Bar (an “integrated”—mandatory—bar) to adopt a mandatory pro bono program. I intervened because I did not trust the State Bar to properly defend the suit on the moral and the constitutional issues raised by the case. A State Bar
committee had allegedly researched the issue of the constitutionality of mandatory pro bono and concluded that it would not be unconstitutional, but in its report it failed to cite any of the cases from approximately half of the jurisdictions that had considered the issue and had determined that mandatory pro bono was or would be unconstitutional.

the Advocate: What is IOLTA? Why do you believe the concept to be unconstitutional; and when did you first become involved in efforts to test its unconstitutionality?

Mazzone: IOLTA is the name of the Interest on Lawyer's Trust Accounts program under which a state takes the interest earned on money of lawyers' clients held in lawyers' trust accounts. It is unconstitutional because the state takes not only the "fruit" of the clients' "tree," but also the right of the client to control the use of the principal—including the right to insist that the principal not bear interest.

I first became involved with IOLTA when I let Professor Rounds talk me into writing an amicus brief in the Massachusetts IOLTA case (Washington Legal Foundation v. Massachusetts Bar Foundation) when the case was pending in the First Circuit. I am admitted to the Massachusetts Bar. When the IOLTA crowd did not consent to the filing of my brief, and the court rejected my motion for leave to file it, I was determined to be heard on the issue. I had worked hard on the amicus brief at a very busy time in my life—I remember reading a draft of the brief on an airplane travelling to a deposition. By the way, the same people who had opposed my brief in the Massachusetts case later had the audacity to file an amicus brief in the Texas case.

the Advocate: How much money is at stake here?

Mazzone: When interest rates were higher the sums statewide were in the $8-9 million dollar range annually if my memory is accurate.

the Advocate: The money, itself, all goes to lawyers, doesn't it?

Mazzone: It is supposed to go to legal services agencies and lawyers. A tremendous amount goes to various Catholic charities and to immigration lawyers, which is ironic. Texas was suing the United States for reimbursement of expenses related to immigration in Texas.

the Advocate: The case has a political dimension to it, does it not?

Mazzone: Yes, because of the First Amendment claims that we asserted.

the Advocate: Isn't the main concern that much of this money goes to legislative advocacy, class actions and other such political activities that invariably have a leftward tilt?

Mazzone: That was a concern, but my main concern was that property rights were being violated. To me, the issue was not who are the proper beneficiaries of this money, or should the "left" and the "right" share it equally. The issue to me was, instead: by what right are we taking clients' money or the use of their principal without their consent?

the Advocate: What happened in the First Circuit?


the Advocate: We understand that at least one Texas bank is in the process of designing a sub-account and sweep cash management product that will render the rationale for IOLTA moot. There are a number of such products now being offered here in Massachusetts. Do you have anything to do with that initiative?

Mazzone: I have persuaded the firm's bank to look at such a product; and I have persuaded some of my fellow shareholders that we have an ethical obligation to our clients to use such an account if it becomes available. Once it becomes available, IOLTA is dead.

the Advocate: Finally, the mother of all legal controversies: mandatory pro bono. There is talk in some quarters that the time has come to compel Massachusetts attorneys to perform certain pre-approved forms of public service, or to compel them to make payments to certain SJC designated organizations in lieu of providing such services. Any views?

Mazzone: Tell me when and where to file my amicus brief; you don't have to send Professor Rounds to ask me for it. Once we allow the state to violate lawyers' rights, we allow the state to violate everyone's rights. "It was the concept of individual rights that had given birth to a free society. It [is] with the destruction of individual rights that the destruction of freedom [has] to begin." Ayn Rand said that in her paper "Man Rights," which was published in the collection, The Virtue of Selfishness in 1964. Lawyers have rights, too!
the Advocate: I know you found particularly galling a certain correspondence that you received from one of the pro-IOLTA counsel in the First Circuit case. Tell us about it, if you will.

Mazzone: I mentioned it a minute ago. It was the Massachusetts IOLTA crowd wanting to file an amicus brief in the Texas case after refusing to consent to the filing of my brief in the Massachusetts case. Moreover, the IOLTA people argued in the Texas case that the plaintiffs in my case had already been heard in the Massachusetts case, and they would not let me be heard in that case.

the Advocate: I know that the ABA has played, and continues to play, the lead role in defending the IOLTA concept. I suppose any jurist who aspires to a position with the top court will think twice before bucking the ABA establishment.

Mazzone: I guess he or she will have to do so given the ABA's involvement in both IOLTA and judicial appointments. The one organization that you would expect to protect clients' rights is leading the charge to undermine them, and somewhat for the purpose of improving the image of lawyers! Helping the poor is a secondary purpose, I think.

the Advocate: How did Texas become a focus of the anti-IOLTA campaign?

Mazzone: The real answer is because I am here and I was willing to take up the fight.

the Advocate: Tell us about the Fifth Circuit case and how it differs from the First Circuit case.

Mazzone: The Fifth Circuit was right and the First Circuit was wrong. That is the significant difference. There are no material differences between the Massachusetts IOLTA rules and the Texas rules. The Fifth Circuit decision was authored by Judge John Minor Wisdom, one of the most distinguished judges in the nation. In fact, the Fifth Circuit courthouse in New Orleans is named after Judge Wisdom.

the Advocate: What states are impacted by the decision?

Mazzone: Texas, Louisiana, and Mississippi.

the Advocate: Were any lessons learned in the First Circuit foray that proved helpful in Texas?

Mazzone: We made it clearer in our pleadings here that we had two Fifth Amendment claims: one regarding the interest and one regarding the principal. We did it that way to make it harder for the courts to avoid addressing these claims. In Massachusetts, I thought that the trial court and the appellate court ignored the claim that IOLTA takes the client's right to dictate how his principal may be used.

the Advocate: Has there been any communication between the Massachusetts pro-IOLTA forces and their brothers and sisters in Texas?

Mazzone: I am sure there has been, but they didn’t include me on it. I also learned that the Massachusetts crowd decided not to help Texas get the case to the Supreme Court. I guess they figured they would lose there, and it is better to have no IOLTA in just the Fifth Circuit than no IOLTA across the whole country, including Massachusetts. Cowards!

the Advocate: What has been the press fall-out from the Texas decision?

Mazzone: The case was widely reported in lawyer publications. The public, however, remains in the dark about what the Bar has been doing. The Texas Lawyer described the case in its 1996 review story as one of the top ten “legal landmarks” of 1996. It was number four after, among others, Hopwood, (the University of Texas Law School affirmative action case.)

the Advocate: Where do things stand now?

Mazzone: The State's motions for rehearing and rehearing en banc have been denied.

the Advocate: If the case does go up, would you argue it?

Mazzone: I think we would do what we did before: Richard Samp of the Washington Legal Foundation—who did most of the work in the case and who deserves most of the credit—would argue some issues (First Amendment) and I would argue others (Fifth Amendment). We both argued in the trial court and in the Fifth Circuit.

the Advocate: We appreciate your taking time out of your busy schedule to talk with us.

Mazzone: My pleasure!
New Rules of Professional Conduct for Massachusetts: A Dissent

By Gerard J. Clark, Professor of Law
After nearly two years of deliberation by the Supreme Judicial Court's Committee on Rules of Professional Conduct, the Supreme Judicial Court approved Rules of Professional Conduct for the State's 30,000 lawyers in February of 1997. However, pursuant to the Committee's recommendation, the approval leaves four issues open for oral argument on April 2: post-trial juror contact, threats of criminal or disciplinary charges, communication with unrepresented parties, and discretionary disclosure of client fraud. Both Bar Counsel Arnold Rosenfeld and Harvard Law Professor Andrew Kaufman described the new code as "cleaner," in the Massachusetts Lawyers Weekly of February 17, 1997. Committee member John L. Whitlock characterized the new rules as "generally more in the nature of a modernization and clarification rather than a sea-change." These lukewarm comments mirror the reception of the bar in 1983 to the ABA Model Rules of Professional Conduct, upon which the Massachusetts rules are based.

Some History and Background
The ABA, created in 1878, has promulgated three codes of ethics in this century. The first was the Canons of Legal Ethics published in 1908. Those Canons, originally thirty-three in number and often aspirational in nature, started to seem inappropriate and outmoded at least in wording for the sophisticated commercial practitioner of the latter part of the twentieth century. For example, Canon 32 stated that "no client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public."

After a number of ABA Commissions had called for revisions ABA President Lewis Powell created the special Committee for the Evaluation of Professional Standards in 1964. This Committee carried the task of revision through to completion under the leadership of Edward L. Wright and recommended the new Code of Professional Responsibility, which was adopted by the House of Delegates in 1969 without amendment. Powell lauded the new code as reflecting the "essential spirit and ideals of the profession" and retaining the "fundamental values of the present canons" and restating and relating them to "current needs." The new code reduced the number of canons to nine "axiomatic norms" (Preamble), which in general terms define the relationship between the profession, the client, the legal system and the public. The Canons were then further spelled out in 138 aspirational Ethical Considerations and in 41 mandatory Disciplinary Rules. Within five years forty-nine states, including Massachusetts in 1972, had adopted some variation of this new code. The Massachusetts variation excluded the Ethical Considerations.

One would have expected that the 1969 revision would have had a long life. It was sixty years in the coming; it was highly praised and the ABA is an organization characterized by inertia. But a confluence of historical events set the stage for a recodification effort only eight years after the 1969 approval by the House of Delegates. Most important was Watergate. The nation witnessed the President, a lawyer, and the Counsel to the President, conspiring in the Oval Office to obstruct justice. Twenty-

...lukewarm comments mirror the reception of the bar in 1983 to the ABA Model Rules of Professional Conduct, upon which the Massachusetts rules are based.

one other lawyers including the United States Attorney General were involved in the break-in or the cover-up. The reputation of the bar, although not high in normal times, reached a new low. Watergate contributed to the sense that zealous advocacy and confidentiality led to an abrogation of lawyer responsibility and to an involvement of the bar in unsavory activities.

Further, Chief Justice Warren Burger suggested that many lawyers were incompetent and that local bar officials across the nation were lax in their discipline of lawyers for ethical violations. Also the United States Supreme Court invalidated a number of bar regulations. Minimum fee schedules fell in Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), limitations on entities that provide for group legal services fell in United Transportation
Union v. State Bar, 401 U. S. 576 (1971) and restrictions on lawyer advertising fell in Bates and O'Steen v. State Bar of Arizona, 433 U. S. 350 (1977). The FTC was accusing the bar of monopolistic practices; unauthorized practice prohibitions and limitations on interstate practice were being questioned. In the seven years after the adoption of the Code in 1969, the ABA amended it four times in response to internal dissatisfaction about group legal services, advertising and specialization prohibitions.

Finally the academic community seemed dissatisfied with the 1969 code. In 1977, L. Ray Patterson, Dean of Emory Law school called for a new code of Professional Responsibility, because the 1969 code relied too much upon the litigator as the paradigm. 63 ABAJ 639. The Seven Springs Center at Yale tapped Geoffrey Hazard to lead a star-studded symposium on professional ethics, which resulted in the publication of Ethics in the Practice of Law (Yale University Press, 1978). Marvin Frankel, a federal judge and former law professor, stated that the adversarial trials that he had presided over rarely elucidated the truth and usually obfuscated it. The Search for Truth: An Umpireal View, 123 U. of Pa. L. Rev. 1031 (1975). Professor Thomas Morgan attacked the restrictions in the ABA Code on access to justice and suggested that they were essentially monopolistic. Morgan, The Evolving Concept of Professional Responsibility, 90 Harv.L.Rev. 702 1977.

Zealous Representation

Most of the commentary suggested that zealous representation was a major cause of the ethical problems facing the bar. The requirement, contained in Canon Seven of the current Code of Professional Responsibility ("CPR"), that a lawyer must represent his client zealously, is central to the adversarial system of justice as practiced in the United States. The code states that “[a] lawyer shall not intentionally ... fail to seek the lawful objectives of his client, through reasonably available means permitted by law,” nor shall he “prejudice his client.” One gets a flavor of the breadth of the rule from its stated exceptions, which allow at the discretion of the lawyer: courtesy, punctuality and accession to reasonable requests of adversary counsel “which do not prejudice” client rights. The obligation to seek client advantage dominates the lawyer's actions regardless of its impact upon the adversary, the court and the public.

Zealous representation guides an attorney's negotiation tactics, communications with adversary counsel, preparation of his clients for trial, questioning in discovery, choice of language in papers filed with the court, and use of the codes of criminal and civil procedure. Critics feared that the mandate causes disputes to become confrontational legal free-for-alls where the opposing parties are bitter enemies and advocates gain client advantage through litigation tactics. Parties can become pawns in the hands of more or less skillful attorney players. Zealous advocates tend to be pessimistic counselors whose warnings of the possible legal complications can intimidate all but the most fearless of clients. In advising clients, these advocates tend to draw the worst case scenario arising out of the imputation of suspicions against the opponent's motives and activities. This can stiffen the client's resolve to fight rather than to settle upon reasonable terms and, as a result, the court becomes the servant of the zealous advocate in gaining tactical advantage.

In addition, zealous representation favors the rich and the unscrupulous. Obviously, in a system where, procedural advantage leads to substantive advantage, money can often buy the best result. Yet the zealous advocate is discouraged from judging his client's position and becomes hardened to the results of his tactics. Finally the mandate excludes alternative roles that an attorney might play, such as mediator, advisor, negotiator, evaluator and problem solver.

Confidentiality

Critics also claimed that the CPR's mandates of confidentiality were far too broad. Confidentiality allows the lawyer to know about his client's illegal acts, and yet avoid the moral, ethical or legal responsibility such knowledge would place upon anyone else. The lawyer is not bound to correct misapprehensions held by the court and third parties that he himself has caused. Indeed the nature of zealous advocacy is to create these misapprehensions. Confidentiality makes investigation of the role lawyers play in damaging the public or third parties virtually impossible. It frees the lawyer from the risk of having to bite the hand that feeds him. Confidentiality lends solace to the client wrongdoer because he has a professional assistant whose loyalty is absolute. Many of these fears were demonstrated in sharp relief in Watergate.
Pro Bono Publico

The profession has recognized that the poor lack a voice before the courts of the land at least since the founding of the Legal Aid Society of New York in 1876. In the 1960s and 1970s, however, the Supreme Court expanded access to the courts for the poor and the civil rights revolution initiated by *Brown v. Board of Education* expanded the substantive rights of the poor and minorities. States established public defender programs in response to Supreme Court mandates. The National Legal Service Program employed large numbers of young and idealistic lawyers; clinical education programs were being instituted in the nation's law schools as well as courses in Poverty Law. The ABA code suggested the "the rendition of free legal services continues to be the obligation of each lawyer," and that lawyers should support programs that serve the poor. (EC 2-25)

The Kutak Commission

In 1977 the ABA established the Kutak Commission to "concentrate attention on the ethical problems faced by lawyers" in nonjudicial settings. The star-studded Commission tilted in favor of the academics with Marvin Frankel, formerly a Columbia professor, Dean McKay of NYU, Thomas Erlich, formerly Dean at Stanford, Sam Thurman of Utah, with Dean Patterson and John Sutton of the University of Texas, as consultants, and Professor Hazard as reporter. Although revision of the Code of Professional Responsibility appears to have been the Commission's charge, by 1979 the Commission was talking about a "reformulation" which would alter the assumption that "the role of advocate" is "the primary role of lawyers." At the Dallas ABA meeting in 1979 President Spann indicated that the issues of confidentiality, accountability to the public and zealous advocacy would be addressed in the discussion draft which would be aired at the 1980 meeting.

The 1980 document was a radical document indeed. It reduced the role of advocacy by toning down its zeal and by acknowledging, as equally important roles, those of negotiator, advisor, intermediary between parties, and evaluator. It expanded the lawyer's obligations of speed, efficiency, and competence. Moreover, it reduced the parameters of confidentiality, requiring some whistle-blowing and mandated pro bono service.

An immediate firestorm of protest from the bar buried any possibility that the Kutak vision of reform would ever be approved. The proposed final draft, issued in May 1981 for discussion at the annual meeting in New Orleans in August, decimated the discussion draft. The criticism from the bar continued, however, and Kutak had to develop a third draft for the 1982 meeting in San Francisco. The debate of the third draft in the House of Delegates, made up of 380 members who gather in state delegations, began with a rule that mandated that retainer agreements be in writing. The debate on this simple question lasted for a full day and the rule was finally rejected in favor of written retainers when they are reasonable. The San Francisco newspapers reported the first day of debate as a ridiculous war of words about nothing where one thing was clear: lawyer self-interest would win out. This negative publicity caused the ABA leadership to do an abrupt about-face. The adoption of the new rules would be adjourned to the mid-year meeting in New Orleans. The ABA was getting tired of the Kutak Commission and the trouble that it was causing.

In February 1983 the delegates, who are by definition long-time ABA schmoozers and conventioneers who take a tax-deductible junket to a pleasant city twice a year, came well-prepared. The Delegates offered over 200 amendments, proposed by such diverse groups as the International Association of Insurance Counsel and the Beverly Hills Bar Association, to the third draft. Twenty-nine were approved. On any proposed amendment the Commission was asked to respond and thereafter any member of the House could offer commentary. The debate on fees lasted a full day; some other amendments were acted upon in less than five minutes.

Listening to the debate, I was reminded of a comment of Professor Arthur E. Sutherland, another student of judicial and professional reform:

> [O]ne can scarcely imagine a speaker at a meeting of a county medical society discussing the possible elimination of disease by public health measures, then qualifying his observance by the statement that many practitioners make a living treating the disease in question; and then unless physicians are vigilant to prevent the adoption of such measures, this source of business will be taken away from them. Yet speakers at bar association meetings are frequently heard to make similar observations about the effect of proposed reforms.

Final approval awaited the summer meeting in San Francisco where the leadership made sure that approval would be quick and perfunctory.
The Kutak Commission’s Proposals

1. **Zealous Advocacy**
   The original discussion draft attempted a radical reorientation “of zealous advocacy” by eliminating the term altogether and requiring the attorney only to present the client’s case “as persuasively as possible.” It required fairness “to other parties and their counsel,” and “respect” for “the interests of third persons including witnesses, jurors and persons incidentally concerned with the proceeding.” The draft prohibited any “tactic having no substantial purpose other than delay or increasing the cost of litigation to another.” Finally, it placed upon the lawyer the duty to “assist a tribunal in maintaining impartiality.” All of the discussion of draft proposals was softened in the 1981 draft. A new comment required the advocate “to use the legal procedure for the fullest benefit of the client’s cause.” The “fairness” to the adversary became a prohibition against “obstruct[ing] another party’s access to evidence.” The “respect” for third-party interest was excluded altogether and the prohibition against delaying tactics became a duty to make a “reasonable effort consistent with the legitimate interest of the client to expedite litigation.” The Commission dropped altogether the prohibition against purposely driving up the costs of litigation. The requirement of assisting the courts to maintain fairness was redrafted into prohibitions against disruption, ex parte communications with judges and attempts to influence judges or jurors.

   The 1982 draft softened the Commission’s recommendations even further. The preamble to the 1982 draft returns to the phrase “zealous advocate.” While the 1981 draft required a lawyer to have “a reasonable basis” for positions taken in court, the 1982 draft only required that the lawyer’s position be “not frivolous.” Furthermore, the broad prohibition contained in the 1981 draft against concealing tactics became merely a prohibition against unlawful concealment. The 1982 draft struck the word “legitimate” from the 1981 requirement that a lawyer must expedite the litigation “consistent with the legitimate interest of the client.”

2. **Confidentiality**
   The current Code requires attorneys to disclose only those frauds on the court and others that the attorney learns about from a client outside of the context of the privilege. The Code, for instance, does not require attorney disclosure to prevent a future murder. The discussion draft allowed, although it did not mandate, disclosure of information “to prevent the consequences of a deliberately wrongful act by the client,” except where the act was the subject of the representation. The 1982 draft allowed disclosure of the wrongful act only if the “criminal or fraudulent” act is likely to “result in death ... substantial bodily harm or substantial injury to the financial or property interests of another.” The final draft retained only the death and substantial bodily harm language.

   Client identification rules dictate where lawyers owe their allegiance when representing a corporation, a labor union or the government. If the client is the entity, then the obligations of advocacy and confidentiality flow to the entity rather than to its supervisory personnel, employees or agents. This would leave information received from functionary non-clients unprotected. In spite of much controversy, the Commission arrived in New Orleans with the bulk of its discussion draft reforms intact. It made clear that the organization, not its functionaries, is the client and that wrongdoing by functionaries should be reported to the highest organizational authority and finally to outside authorities.

   The American College of Trial Lawyers attacked the proposal as making the lawyer a “corporate agent,” “a special agent,” “a police dog,” and the “ultimate conscience for the organization” and proposed that the lawyer “represents the organization including its directors, officers, employees, members, shareholders and other constituents.” Despite the support of the ABA’s own Corporate and Banking Section for the Kutak proposal, the College’s proposal was adopted.

   The confidentiality question came up a third time with respect to the question of candor towards the tribunal. Many common litigation techniques, including cross-examination and certain kinds of testimony, present lawyers with the opportunity to make an essentially false representation to the court while stopping short of the prohibited participation in perjury. The discussion draft required trial lawyers “to correct a manifest misapprehension resulting from a previous” evidentiary submission and prohibited the introduction of evidence “that the lawyer knows to be substantially misleading.” The 1981 draft modified this to a prohibition against false statements or “the equivalent.” The 1982 draft prohibits only “false misstatements of material fact or law to a tribunal,” thus impliedly sanctioning false statements of nonmaterial fact and law. Moreover, while the 1981 draft required attorneys to prevent the commission of frauds upon tribunals, the 1982 draft merely prohibits a lawyer from “assisting [in] a criminal or fraudulent act.” Furthermore, the
discussion draft required lawyers to correct false evidence if they come to know of its falsity during a proceeding. This provision was excluded by amendments offered by the General Practice Section of the ABA and passed by the House of Delegates.

Finally, the discussion draft required truthfulness in statements made to others. The 1982 draft softened this to require disclosure “to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client.” Thus the MRPC final draft on confidentiality is in diametrical opposition with the intentions of its framers. They sought to circumscribe the more extreme manifestations of confidentiality but their result extended those manifestations even further. The comment makes it clear that the intent is to expand the coverage to all information regardless of whether the source of the information was the client, a third party or the investigatory efforts of the lawyer. Also while the CPR prohibited the use of covered information for the advantage of the lawyer or third persons, the MRPC omits this prohibition without explanation.

In addition, each of the exceptions was subtly changed. While the CPR mandated “full disclosure” as a precondition of a waiver of protection by the client, the MRPC requires only “consultation.” The CPR’s required disclosure of past frauds, although retained in the Kutak Commission’s recommended final draft, was eliminated by the ABA’s House of Delegates in its 1983 mid-year meeting. The CPR’s permissive disclosure, when required by law or court order, is dropped altogether. The CPR’s permissive disclosure of covered information to collect a fee or to defend a claim against the lawyer of wrongful conduct is expanded to include any claim or defense of the lawyer against a client where covered information is in issue.

3. The Question of Role
If zealous representation were limited to the lawyer’s role in the presentation of cases to the courts, numerous objections to the role would evaporate. The current Code, however, applies zealous representation to everything that the lawyer does. The discussion draft included chapters that defined four other roles that the lawyer might assume, including advisor, negotiator, intermediary between clients, and legal evaluator. Each role required varying levels of disclosure and evaluation of fairness. For instance, the negotiator was required to “disclose a material fact” and was prohibited from “concluding an agreement” that would be considered “unconscionable.” The 1981 draft reduced those roles to advocate, advisor and intermediary. The role of negotiator did not survive. Apparently, the bar could not swallow the discussion draft’s requirement that negotiators be “fair in dealing with other participants” or that negotiators “disclose a material fact” and “correct manifest misapprehensions of fact.”

In both the 1981 and 1982 drafts the roles of advisor, intermediary and evaluator for third persons were further modified. The discussion draft prohibition against advice or aid in “an illegal course of conduct” or engaging in “a legally wrongful misrepresentation” was excluded from the 1982 draft. While the discussion draft allowed the advisor to take into account “all relevant considerations” in rendering advice, the 1982 draft limits the “other considerations” to “moral, economic, social and political factors that may be relevant to the client’s situation.” Indeed, this marks the only acceptance by the new code of nonlegal factors in the lawyers’ deliberations but, again, only as they relate to the client.

4. Dilatory Tactics
A discussion draft comment warned the bar that “no professional shortcoming is more widely resented than procrastination.” Thus, it required lawyers to “attend promptly to matters undertaken for a client and give them adequate attention until completed.” The message apparently disappeared: the 1981 draft required only “reasonable promptness and diligence” while the 1982 draft called for “reasonable diligence and promptness.” Why the order of these two words was changed is unexplained.

5. Competence
The discussion draft defines competence as “specific legal knowledge, skill, efficiency, thoroughness and preparation employed in acceptable process by lawyers undertaking similar matters.” At the mid-year meeting in New Orleans in the summer of 1981 this provision was attacked by the General Practice Section of the ABA as an attempt to drive the general practitioner out of business. Consequently, the 1982 draft requires only “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

6. Conflict of Interest
The conflict of interest principles require undivided loyalty to the client and, further, the lawyer’s obligation as a zealous advocate. The fact that conflicts are imputed to taint whole firms and often subsequent firms has operated to frustrate large firms from business they
might have preferred to take. The CPR asked whether any two of the lawyer's clients had "differing interests" so as to undermine the exercise of independent professional judgment. The MRPC narrows the definition of a conflict to representation that is either "directly adverse" to that of another client or that places some "material limitation" on the representation because of duties to another client. With respect to client waivers, the CPR allowed them only when it was "obvious" to the lawyer that he could represent both and after "full disclosure." The MRPC requires only "reasonable belief" that the dual representation can continue and "consultation" with the affected clients.

Further, the CPR extended the conflict principle to the lawyer's "own financial, business, property, or personal interests" that might affect professional judgment. The MRPC prohibit material limitations of representation arising from the lawyer's own interest.

The MRPC allow business relationships that are "fair and reasonable," with client consent, whereas the CPR prohibited those relationships that involved "differing interests" or where the lawyer was expected to act as a lawyer except with client consent "after full disclosure."

7. Pro Bono

The discussion draft required lawyers to "render unpaid public interest legal service" and to make an annual report about same to "the appropriate regulatory authority." The final draft simply states that "a lawyer should render public interest legal service."

Conclusion

The Kutak Commission was about reform. Its radical first discussion draft sought to pry the lawyer away from the client and push the lawyer in the direction of the public interest. However, the Commission was politically naive. It failed to recognize that its first draft would merely encourage the bar to mobilize in opposition. Once the bar was mobilized, it found that the promulgated ethical obligations were quite important in defining their own practices and if the process of change had begun, why not participate in the process in order to mold the obligations in such a fashion as to further self-interest? Thus after publication of the discussion draft, the commission totally lost control of the process and the process was driven by the conventioneers. The result is a code molded not by the prestigious Kutak Commission, but by the peculiar constituencies inside the House of Delegates. No specific Kutak reform survived. The result is a set of rules that dilute the obligations in the CPR. The advocacy role still predominates. Confidentiality is expanded as is the exception that allows disclosure when there is a dispute between a lawyer and a client. Disclosure of illegal conduct is never mandated. The definition of conflict of interest is narrowed. Clients are entitled to less information when asked for waivers. Lawyer prerogatives are expanded at the expense of the client and the public.

The Massachusetts Adaptation

The proposal of the Massachusetts Committee on the Rules of Professional Conduct essentially adopts the ABA Model Rules. Some changes, however, are made. Rule 1.3, requiring diligence and promptness, is adopted with the addition of a sentence that states that "the lawyer should represent a client zealously within the bounds of the law." ABA Rule 2.2 that allows the lawyer to serve as an intermediary is eliminated. Discretion to disclose confidential information in ABA Rule 1.6 is expanded to "fraudulent act[s]" of the client that harm third parties, although the S.J.C. will hold a hearing on this question. ABA Rule 1.10, concerning imputed disqualification, is relaxed for lawyers joining new firms. The exhortation to perform public service work in the ABA final draft is dropped altogether. In a late and surprising amendment of an earlier amendment published in June of 1996, Rule 3.3 resolves the much-debated question of criminal trial perjury by prohibiting disclosure by the lawyer, after calling upon the client "to rectify the false testimony," the client "refuses or is unwilling to do so." Finally ABA Rule 1.5 is relaxed to allow fee splitting, just as Massachusetts did with its adaptation of CPR, although the new version does not require disclosure to the client of the terms of the split unless the client demands the information.
The Question on The Table

In light of the fact that we have heard no particular ground-swell from the bar that existing rules are unworkable or that they restrict the practice in inappropriate ways, the question comes down to whether the 1972 Massachusetts adaptation of the CPR should have been replaced by the Massachusetts adaptation of the MRPC. Although the question is multi-faceted, if the premise is that the purpose of such rules is the protection of clients and the public, then it follows that the Committee’s proposal should have been rejected. The MRPC relaxes the ethical restrictions on lawyers. When Committee members talk about a “cleaner” code, I assume that they are speaking about the resolution of some of the ambiguities of the earlier code. On balance, the claim is true; the ambiguities have been resolved in favor of lawyer self-interest. I guess the fact that thirty-nine states have adopted some version of the Kutak Rules argues in favor of their adoption. But if it’s the only reason, it seems insufficient.

1 Discussion Draft, supra note 19, Rule 1.1.
2 1982 Draft, supra note 29, Rule 1.1.
Massachusetts Family Law and Practice, 2nd Edition

by Charles P. Kindregan, Jr., and Monroe L. Inker

Reviewed by William B. Moran, JD '75
It would be a noteworthy but dubious feat to attend law school in Massachusetts and not consult West Publishing’s *Massachusetts Practice Series* during one’s studies. That is because the series is well known for its down to earth exposition of the topics covered in the set, which now numbers forty-five volumes. The series represents a practical bridge between the academic discussions of law school and the reality of practicing law.

*Massachusetts Family Law and Practice,* 2d, consisting of four volumes and two 3.5 inch floppy disks containing most of the forms found in the texts, is no exception. It remains the *sine qua non* for those who intend to practice family law. The volumes, numbered as 1, 2, 2A and 3, seemingly stutter with Volumes 2 and 2A, due to the two volumes’ coverage of divorce. Practical forms have always been a part of the *Massachusetts Practice Series,* and *Family Law and Practice,* 2d has over 400 useful forms. Distinguishing this revision is that most of these forms are also on floppy disks. Where a form appearing in one of the volumes is also on a disk, an icon depicting a floppy disk appears in the text following the title of the form. Given the time one will save by virtue of these forms being on disk, and the ease with which one can modify a form on one’s personal computer, one could conclude that the disks themselves are worth the purchase price. With a form on a computer screen one can then modify it to fit the particulars of the case and then print it immediately.

For those hesitant to use computer software, help is available from West Publishing. Besides, even if hesitant, you could not be as clueless as the person who called his computer company unable to find the “*any key,*” as instructed in the manual to strike in completing a command, nor as out of touch as the individual who thought the CD-ROM tray was a cup holder. As it turned out when I attempted to use the disks I could not get the forms to appear on my computer screen, although they appeared to have been properly loaded on my “A” drive. A 1-800 “technical assistance” telephone number is provided with the disks and I called for help. Expecting to be “on hold” for some time, I called before my computer was turned on and a disk was loaded, but I got a person right away. Within a few minutes the individual walked me through the steps and the forms were on my screen.

Let’s face it, I would put you to sleep if I attempted to give a synopsis for each of the 74 chapters in this work. As mentioned, it is a given that, seasoned or new, any practitioner intending to practice family law needs to consult this series. To do otherwise would border on professional negligence. Instead, in the hope that you will find it more stimulating to read, I intend to present an overview and to share some of the aspects I found of interest in reviewing the volumes.

The set begins with a brief discussion of the origins of family law, the idea being that the practitioner who is familiar with history will be more at home with concepts than one who grasps only the current black letter law. Shedding the mother country’s ecclesiastical role for divorce, Massachusetts first vested this responsibility with the legislature, then to the Governor and his council, and ultimately, in 1785, to the Courts. Hard to imagine today, but in colonial times males could marry at fourteen and females at twelve. Not until 1845 did the disabilities for married women begin to fall as women gained the right to retain their separate property by premarital agreement and to sue. For those who consider drugs to be a recent scourge, in 1889 the legislature added the voluntary and excessive use of opium or other drugs as a ground for divorce.

In Part II of Volume I, the ethical and professional obligations of family law practitioners are discussed. This is not to assert that these obligations are unique to family law, but they are noted as particularly worth knowing as a large number of attorney complaints stem from this area of practice. The S.J.C. rules are the primary source for the lawyer’s ethical obligations but the text cites many other sources a lawyer could consult. Advertising is not prohibited, but it must be truthful and the Massachusetts Consumer Protection Act applies to lawyers’ ads. Lawyers may advertise that they are specialized in a particular practice, but if one claims to be “certified” for a field, the certifying source must be identified...
and if they hold out as specialists they are held to a level of performance of such specialists in a particular field. While advertising is allowed, within boundaries, in person solicitation, though it could be seen as a “direct” form of advertising, is not permitted.

Domestic relations matters may not be on a contingent fee basis. Such an arrangement could potentially hinder the lawyer's interest in resolving the matter speedily since there would be a direct financial stake in the outcome and this also would be at odds with the duty to explore reconciliation possibilities. While there are some gray areas involving domestic relations and contingent fees, the wise attorney will err on the side of caution. The fee itself must be fair and reasonable and one can be disciplined for violating this. However, eliminating contingent fee arrangements does not protect a divorcing couple from lawyers who would encourage prolongation of the battle, as the fees increase with the hours expended. Surprisingly the fee agreement does not have to be in writing, but again, this seems to be inviting trouble to fail to do so. Trouble can occur in the form of disciplinary proceedings as well as legal malpractice, the latter triggered by a failure to exercise the degree of skill of the ordinary qualified practitioner.

Even when an attorney-client relationship is terminated there are obligations and hence potential pitfalls such as the matter of the duty to return papers to the former client. Some pitfalls are so obvious, such as representing both husband and wife in a divorce or getting sexually involved with the client, that a lawyer who does not intuitively understand these as inherently troublesome is not likely to “get it,” even if formally advised that a practice is impermissible. How to handle an obvious problem, however, may not be so obvious. For example, what does one do when confronted with a client who is about to commit perjury? The text describes how this is to be handled. Some conflicts may not instantly appear to be troublesome, but only a brief reflection reveals the danger. For example, representation of the husband in a bankruptcy and the wife in a divorce action. A “light” should at least come on when an attorney has both a Mr. and a Mrs. as potential clients. Firms, not just the particular lawyer, must be alert for such conflict as well. And in Massachusetts, even in an uncontested no-fault divorce, it is out of bounds for an attorney to represent both sides.

Presumably all lawyers know that client funds must be kept separate from their own funds. If “IOLTA” sounds like an opera or the name of a recently renamed Eastern Block country, you had best read up on this. The text sets out the details of this issue.

Of course no text can provide “answers” to problems. A text cannot be a substitute for lawyering or the exercise of judgment. For example, what does one do upon becoming aware that the opposing spouse may have engaged in criminal behavior? The short response is that one may not use this information solely to gain advantage in a domestic relations matter, a formulation which leaves considerable gray area. Another area with uncertain parameters is negotiation. Although there is a duty to be truthful and not misrepresent, this leaves a wide swath for withholding information as part of the strategy for negotiation.

While this set is indispensable, there is no pretense that one needs nothing else and accordingly this volume also addresses other research resources for the Massachusetts family law practitioner.

As there is no common law basis for domestic relations law, the foundation for any research is the Massachusetts General Laws. No doubt this is familiar, but it reinforces the point that this set is written in a style that is very basic. It assumes the reader knows little about the subject, and perhaps about law as well. For example it informs the reader about the Northeastern Reporter. Does anyone past the first semester of law school not know this? The reader is also advised that law schools publish law reviews and that these may contain family law topics. The book cannot be faulted for assuming the reader knows too much! One can understand, however, that a well designed practice series, by design, needs to cover the elemental as well as the advanced aspects of a subject. Computer research is also noted with a brief discussion of the technology, such as CD-ROMs and on-line data services. As long as its rules are complied with, the Massachusetts Probate and Family Court accepts computer generated forms.

Volume I also addresses initiating and terminating the attorney's appearance in domestic relations actions, complementing the earlier chapter's discussion of the professional responsibilities owed. This chapter is particularly useful for its presentation of the “initial client interview” discussion and the “retainer letter” and “client questionnaire” sections that follow, the latter of which is also on the floppy disk. As mentioned at the outset, one nice feature of this set is the use of an icon, that is a picture, of a floppy disk whenever the text discusses a topic for which there is a form on the two floppy disks that come with this set. Fortunately, one does not have to use the computer to see the form because it also appears in the text itself, i.e., a “hard copy” is provided, just as you would have expected in the pre-computer days.
Also discussed, in nearly eighty pages of Volume I, is the subject of attorney’s fees in family law cases. It may be of interest that while contingent fees are out of bounds, “fee shifting,” referred to as “fee awards,” are not. Many forms appear here, including those for a fee agreement, with and without retainer and minimum fee. These also are on disk.

In Part IV of Volume I, entitled “The Courts and Family Law Practice,” a discussion of the Massachusetts courts and the extent of their particular jurisdiction over family law matters is provided. Despite a reorganization of the Massachusetts trial courts in 1978, it is still the Probate Court, now called the “Probate and Family Court,” that hears most family law matters. Nevertheless there are some types of family law related issues that are handled by the Superior and District Courts and the text sets these out.

The statutes and rules governing Massachusetts family law practice are next addressed and it is here that the text discuss the applicable Massachusetts General Laws for marriage, annulment and divorce. Here practical topics, such as the circumstances where parental consent is required for one under age eighteen, are covered. Interestingly, getting married by one who lacks the authority to wed does not invalidate the marriage, if the marriage otherwise complies with the statutory requirements and at least one of the parties believed they were being lawfully married. Think this would only be the subject of law school hypotheticals? Well, judges are not qualified to solemnize a marriage in Massachusetts, unless they happen to qualify on other, independent bases, such as being a minister for a church that has complied with filing requirements with the Secretary of State.

While society continues to move towards the laudable goal of more complete independence for women, some old fashioned customs, such as alimony, are not soon to be discarded. As the authors put it: “spousal support remains an important part of the Massachusetts statutory family law scheme.” And since 1974, equitable property assignment has been added as a form of financial relief. While the trial court must look to the statutory factors in dividing property, the court has broad discretion and will not be reversed unless plainly wrong and excessive.

Spousal abuse, long kept in the shadows, has received increasing public attention. Massachusetts, in 1978, was one of the first states to address this problem by statute. Individuals violating court orders (which are civil) under this Chapter are criminally liable. Interpreting the term “abuse,” the Massachusetts Supreme Judicial Court in Commonwealth v. Gordon, 407 Mass. 340 (1990) held that the term is akin to the common law crime of assault, the effect of which is to make the possibility of abuse sufficient in a volatile situation. Other statutory matters discussed in this section include adoption, provisions governing business and property matters of husbands and wives and premarital contracts. The latter are recognized in Massachusetts, but to be effective as to creditors such agreements also need to be recorded in the Registry of Deeds. A controversial issue, adoption by same-sex couples, is permitted subject to the single overriding consideration in all children’s cases: the best interests of the child. One becomes acutely aware that most matters are covered by one or more statutes, and the practitioner would be well advised to check the statutes first where any family law matter is involved. For example, even the matter of health care insurance is addressed statutorily where a divorce or separation is involved.

The rules of domestic relations procedure are also found in this first volume. Fortunately they are not unlike the Massachusetts civil procedure rules which, in turn, are patterned after the Federal Rules. The chapter walks the practitioner through the details of the various procedural rules and adds the useful feature of an alphabetical table that tracks the time requirements for the various rules from “Action” and “Admissions” to “Vacation of Marital Home.” The guidelines for child support as well as various Uniform Rules pertaining to child care and custody are also found here. Consistent with the point made earlier that domestic relations law is largely about statutory law, pursuant to statute the guidelines are developed by the Administrative Office of the Massachusetts Trial Court. This is fairly detailed and largely formulaic. Consistent with the text’s approach to walk the practitioner step by step through such matters, a worksheet to work through the proper amount in a given case is set forth. Nothing, however, is simple and there are exceptions to be considered.

The Rules, Orders and Practices of the Probate and Family Court and those in District and Juvenile Courts, which can affect family law proceedings, are also set forth. One disconcerting item is mentioned, pertinent to those divorcing with minor children: the possible institution of mandatory education classes for divorcing parents. One wonders whether it goes over the line to mandate such classes as opposed to offering them. Is this like a class for bad drivers? And is this really anything more than a windfall for the enterprising souls who will be capitalizing on this steady flow of guaranteed customers?

Federal policies affecting family law are also discussed and this largely boils down to taxation and bankruptcy as states remain in control of resolution of matrimonial and domestic relations litigation. Nevertheless, the federal
government still impacts domestic matters with laws such as those dealing with child support collection (including locating parents owing support) and child custody disputes, requiring states to honor other states' custody decrees. Federal law also impacts the division of pension interests. Demonstrating how complex domestic relations law has become, transcending mere state involvement, is the fact that not only does the federal government increasingly have more to say on these matters, but that even international law can be involved as with intercountry adoptions. Anyone who clings to the notion that domestic relations law is a simple niche of law practice has not kept up with the changes.

The first volume concludes with "The Law of Marriage." While the law has made many adaptations to recognize societal changes, it is remarkable that, even though unenforced, consensual intercourse between unmarried adults remains a criminal violation in Massachusetts. Yet when a landlord refused to rent an apartment to an unmarried cohabiting couple, the S.J.C. ruled that a state statute prohibiting discrimination on the basis of marital status took precedence.

If there is any doubt about what the greater part of "Family Law" is really all about, Volumes 2 and 2A dispel this. These two of the four volume set are devoted to divorce and all the problems that attend that process such as alimony and child support. These volumes also include the natural corollary to divorce, that is "antipartatory divorce" or as it customarily described, the "Premarital Agreement." The authors point out the irony that in nearly all divorces, the issues in dispute rarely involve the strict legal concept of divorce. That is, the divorce itself, the decree ending a marital status is rarely in dispute. They note: "It is the issues relating to property, support, children, etc. which are at the heart of contemporary divorce practice."

As mentioned at the outset, divorce is a statutory creation. The authors provide a useful six page topical chart outlining the principal statutory provisions regarding divorce actions, just the sort of outline practitioners would likely develop on their own if regularly practicing domestic relations law. Marriage is a "partnership," we are told, and now this ideal has the force of law as M.G.L.A. c.208, 34 statutorily recognizes this. Its importance is activated upon the failure of a marriage and it allows the court to look at the whole picture when the "partnership" is being dissolved. This means, for example, that a "homemaker's" intangible contributions may properly be considered and the authors point out that this is more inclusive than the community property concept. For the partner who contributes mere money to the partnership this apparently can mean an unequal division of assets favoring the contributor of the intangible. Alimony is still available and this can be in addition to the equitable distribution. Although the statute sets out factors a judge must consider in this process, there is wide judicial discretion and consequently the judge one draws can, as is the case in other judicial proceedings, have an impact on the outcome.

The text covers all aspects of jurisdiction, reminding the reader once again that divorce law can be as involved as any area of practice. Recognition of divorces obtained in foreign countries, the long arm statute, and the full faith and credit clause are all areas a divorce lawyer may have to address. Demonstrating further that the law, while taught in subject matter compartments, knows no such bounds in practice, the authors also discuss the interplay between tort actions and divorce actions and point out that, fresh from a divorce action in which tortious behavior was involved, a spouse potentially can still face a later tort action. Thus, where abuse is involved, or even alleged, a divorce practitioner must be alert to the full risk of liability to which the client could be exposed.

Under the heading that could be named "And We Take Our Divorce Decrees Seriously" is the interesting Massachusetts statutory provision that a couple that cohabits after getting divorced can be criminally prosecuted. So much for the idea of getting back together once divorced. The remaining chapters in Volume 2 walk the practitioner through the particulars of jurisdiction, venue, parties, commencement of the divorce action, service of process, and the defendant's pleading response. This first divorce volume concludes with the topics of orders pendente lite, restraining orders, discovery, alimony and child support. Each topic is succinctly discussed and complemented with numerous forms, enabling one to go immediately from the academic side of the topic to the practical. The text assumes nothing. Each topic is treated as if the practitioner is totally unfamiliar with or has forgotten the subject matter. One thoughtful feature is the detail given to describe each section topic within a chapter. Because of this detail one can generally tell whether the matter being researched is in the section without having to wade through the text. For example, the section topic "Jurisdiction to Provide for Custody for Minor Children.
Incident to or After a Divorce" clearly delineates the matter covered. One consulting the index under "jurisdiction" will also be led to the same section. In some texts, when using an index, you either correctly guess the words used by the author to describe the topic or you spend time finding the topic description the author chose, though you might not have selected it. The solution is to list the same topic under several different subject references. To their credit the authors do this. Thus the reader will also find the jurisdiction for child custody topic under "child custody" as well.

In Volume 2A's continuation of the various aspects of divorce, about half of that volume is devoted to property division issues. The remainder of the volume deals with child custody and visitation, divorce settlement agreements, and for those instances when matters cannot be settled, the chapter concludes with the details of pretrial conference and trial. Following the substantive discussion of property division is a "Quick Reference" chapter providing citations on property division and alimony issues. Here headnote style summaries of aspects of M.G.L.A. c. 208, 34, the statutory provision for property division, are provided along with property related cases as affected by ancillary issues such as the parties conduct, the length of the marriage, and needs of the children. Each of the topics covered in Volume 2A are supplemented by forms, all of which are also on the floppy disks. We are talking detail here, as matters such as who gets the napkin holder and the rubber raft are listed, a reminder of the practical details of divorce settlement, and the kinds of items over which people can have strong feelings when it comes time to divide possessions.

In Volume 3 the attention turns from divorce to the topics of domestic violence, non- support proceedings, and then on to adoption and other issues related to child care such as guardianship and child placement. Enacted in 1978, Chapter 209A of the Massachusetts General laws broadly deals with the subject of abuse, covering not just spousal abuse but also abuse between family and household members. Protection from "stalking" was included in 1992 with M.G.L.A. c.265, 43. Certainly all applaud these provisions but what protection is afforded for one falsely accused of abuse? The authors note that there is no authority to support the idea that one falsely accused has an independent claim for damages and that other "theoretical" remedies, such as abuse of process or malicious prosecution, are unlikely to provide relief.

Concerning adoption the authors observe that, as in custody matters, the best interest of the child is the paramount concern. While a parent's consent to the adoption of its child is the rule, there are exceptions to this in parental termination cases. Several illustrative cases follow the discussion of adoption. It is noteworthy that a tort action is available for adopting parents where the adoption agency intentionally or negligently misrepresents material facts about the history of the child. In one such case an agency failed to disclose that the natural mother was schizophrenic and that the child was retarded. It is also interesting that, in one respect, an adoption may not be as final as one might presume. The concept of "open adoption" may allow the natural parent to continue to have contact with the adopted child. Of course the choices are not limited to remaining a parent or giving a child up for adoption, and the text also discusses these other forms of "substitute care." It is here that the topics of guardianship are discussed as well as children with special needs. There are many forms included here too. More obscure topics are also covered in this last volume, such as the protection of children's interests in entertainment contracts. The courts are involved in these matters from the outset and must approve such contracts. Volume 3 also includes an extended discussion of paternity disputes, including DNA identification. With the scientific advances in this area, a practitioner must now at least be familiar with the biochemical terminology and the rudimentary principles. The authors provide a very readable discussion of this topic.

The Volume concludes with the topics of proceedings for modification, equitable relief, contempt and proceedings on appeal. Indexes to the Family Law and Practice set are found at the back of Volume 3. In addition to the well thought out general index other useful indexes are found here as well. Since domestic relations law is statutorily based, the authors have provided a table to take the practitioner from a M.G.L.A. cite to the section of the set dealing with each provision. There follow relevant federal statutory citations, Massachusetts court rules, and a table of cases, each leading the reader to the section or note of the set discussing or referencing the matter. Thus there are several means to access the textual material and because of this knowing a case name or a statutory provision may be enough to get one started on a research issue.

This is an indispensable set for those practicing family law. While this will not be "news" for most practitioners, this second edition, vastly expanding upon the original, is well worth the modest investment. The forms on disk alone justify the expenditure.
Recent Practice-Oriented Acquisitions

by Sonia Ensin, Reference Librarian,
Suffolk University Law Library
Listed below are a selection of the practice-oriented materials recently acquired by the Suffolk University Law Library. The titles are arranged alphabetically by subject and include the call number. To locate the books in the Law Library use the call number and the location designation preceding the call number. If the designation is "L-LEAF" or "State Material" the material is on the fifth floor of the library. "Reference" or "Reserve" indicates the material is on the main floor of the library. If the call number is not preceded by a designation, the book can be found on 3 Lower in the circulating collection. Circulating books may be checked out with an updated Suffolk University Law School I.D. for a period of one month.

These are only a selection of the practice-oriented materials in the Law Library's collection. For the complete holdings of the Law Library, please consult our online catalog, which can be accessed from terminals in the library or at the Law Library's Internet site: http://library.suffolk.edu

The Law Library is open from 8:00 a.m. to 11:00 p.m. Monday through Friday, and from 9:00 a.m. to 11:00 p.m. Saturday and Sunday. Changes in Library hours are posted at the main library entrance.

If you need assistance, the Reference Librarians are available to help you from 9:00 a.m. to 9:00 p.m. Monday through Thursday, from 9:00 a.m. to 6:00 p.m. on Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday and Sunday. You may reach the Reference Department at 573-8516 (Reference Desk) or 573-8199 (Reference Office).

ANTITRUST LAW
PROVING ANTITRUST DAMAGES: LEGAL AND ECONOMIC ISSUES. Antitrust Damages Project Committee; William H. Page, General Editor; Guir Ademi... et al. Chicago, IL: Section of Antitrust Law, American Bar Association, 1996. KF 1649 .P76 1996

The Foreword of this volume indicates that this guide "will be useful to lawyers and expert witnesses who are formulating or challenging damage models and to judges who are evaluating their sufficiency."

APPELLATE PROCEDURE

ATTORNEY AND CLIENT


Some of the topics covered are understanding the client's social-emotional base, dealing with problem clients, stress control, staffing issues, and improving your image.

BANKRUPTCY
BANKRUPTCY DEADLINE CHECKLIST: AN EASY-TO-USE REFERENCE GUIDE FOR CASE MANAGEMENT AND ADMINISTRATION. Norman L. Pernick. 2nd ed. Chicago, IL: Section of Business Law, American Bar Association, 1996. KF 1524.3 .P36 1996

CAPITAL GAINS TAX

The "forms are designed to help real property lawyers comply with many of the provisions of Foreign Investment in Real Property Tax Act." A brief description of the purpose and use of each form is included.
COMMERCIAL LAW


A LAWYER'S GUIDE TO DOING BUSINESS IN SOUTH AFRICA. Editors, Vaughn C. Williams... et al. Chicago: American Bar Association, Section of International Law and Practice, 1996. KTL 1051 .L38 1996

Some of the chapters in this guide are: Establishing a Joint Venture in South Africa, Establishing a Distribution Business, South African Financial Statement Requirements, Taxation and Foreign Exchange, Trade Regulation, and South African Employment Law.

COMPUTER CRIMES


CONDOMINIUMS


CONSOLIDATION AND MERGER OF CORPORATIONS


CONSPIRACY


CONTRACTS


"These guidelines seek to establish...a secure, computer-based signature...which will (1) minimize the incidence of electronic forgeries, (2) enable and foster reliable authentication of documents in computer form, (3) facilitate commerce by means of computerized communications, and (4) give legal effect to the general import of the technical standards for authentication of computerized messages." (from Introduction) Commentary on the guidelines is also included.

CORPORATIONS


COURTS-MARTIAL AND COURTS OF INQUIRY


"This text is designed to lead readers through the maze of procedural and substantive rules, military acronyms, and related practices unique to military criminal law, with citations to pertinent caselaw, statutory and regulatory authority." (from the Preface)

CRIMINAL LAW – MASSACHUSETTS


The Sourcebook "will serve as a quick reference in responding to the various questions that inevitably arise in the course of criminal litigations." (from the Foreword) It includes a section on Massachusetts courts, selected statutes, punishments and proceedings in criminal cases.

CRIMINAL LIABILITY


Table of Contents: Defending Negligent Security Cases; Negligent Security Cases: Setting Standards to Reduce Liability; Creative Ways to Prove Negligent Security Cases in Apartment Buildings, Hotels and Shopping Malls.
CRIMINAL PRACTICE AND PROCEDURE


CUSTODY OF CHILDREN


DISTRICT COURTS


DIVORCE – MASSACHUSETTS


DOMESTIC RELATIONS


The author’s “objective...is to provide all statutes, rules and regulations pertinent to the practice of family law in one, convenient publication...and to provide annotations of important cases and resources.” (from the Preface)

EMPLOYERS’ LIABILITY


ENVIRONMENTAL LAW


ESTATE PLANNING

ESTATE PLANNING FOR THE AGING OR INCAPACITATED CLIENT: PROTECTING LEGAL RIGHTS, PRESERVING RESOURCES AND PROVIDING HEALTH CARE OPTIONS. Editors, Donald N. Freedman, Emily S. Starr; Contributing authors David Aptaker... et al. (loose-leaf) 1994 rev. ed. Boston, MA: MCLE, 1994 RESERVE KFM 2540 .E884 1994


EVIDENCE, EXPERT

FAMILY VIOLENCE – LAW AND LEGISLATION
Some of the chapters are: Allegations of Child Sexual Abuse in Custody Disputes; Is There Tort Remedy for Spousal Abuse After Divorce?; Battered Women in Massachusetts; Handling Abuse Allegation in Divorce Custody and Allegation Cases; etc.


“The Lawyer’s Handbook explains how lawyers can recognize the signs of domestic violence and lays out ways to respond effectively. (from the Introduction)

FINANCIAL STATEMENTS – LAW AND LEGISLATION – UNITED STATES

GOING PUBLIC (SECURI TIES)

GUARDIANSHIP AND WARD

INHERITANCE AND TRANSFER TAX

INSTRUCTIONS TO JURIES

“The Subcommittee on Accounting Issues has attempted to address the primary jury issues in securities litigation, focusing particularly on issues involving accountants.” (From the Introduction)

INSURANCE, EMPLOYERS’ LIABILITY
INSURANCE COVERAGE OF EMPLOYMENT DISPUTES. Peter Bennett, editor. Chicago: Tort and Insurance Practice Section, American Bar Association, 1996. KF 1316 .157 1996

INSURANCE, PROPERTY – UNITED STATES
PROPERTY INSURANCE ISSUES IN CATASTROPHE LOSSES: LEGAL QUESTIONS AND PRACTICAL SOLUTIONS. Pamela Leven, Editor. Chicago, IL: Tort and Insurance Practice Section, American Bar Association, 1996. KF 1190 .P73 1996

INSURANCE, PROPERTY – UNITED STATES
PROPERTY INSURANCE ISSUES IN CATASTROPHE LOSSES: LEGAL QUESTIONS AND PRACTICAL SOLUTIONS. Pamela Leven, Editor. Chicago, IL: Tort and Insurance Practice Section, American Bar Association, 1996. KF 1190 .P73 1996

GOVERNMENT LIABILITY

This volume contains copies of speakers' papers and outlines from the Massachusetts Bar Association Continuing Legal Education meeting held in April 1996.

GRAND JURY

INSURANCE, PROPERTY – UNITED STATES
PROPERTY INSURANCE ISSUES IN CATASTROPHE LOSSES: LEGAL QUESTIONS AND PRACTICAL SOLUTIONS. Pamela Leven, Editor. Chicago, IL: Tort and Insurance Practice Section, American Bar Association, 1996. KF 1190 .P73 1996

Some of the topics discussed are entities other than the policyholder and the carrier; coverage issues such as business interruption losses, upgrades, earthquake coverage; and claim issues such as proving amount of loss, detecting and preventing fraud.
INSURANCE, TITLE
This work contains an overview of title insurance and of available title insurance forms; and an analysis of 1992 ALTA policies.

INTELLECTUAL PROPERTY

INTERVIEWING IN LAW PRACTICE
"The Report is organized in chapters, with a chapter dedicated to of the 12 regional federal appellate circuits, including the law of the state within those circuits."

JUVENILE CORRECTIONS – MASSACHUSETTS

"This volume is organized by setting forth each of the black letter standards for the twenty approved volumes with an annotation following each individual standard that is cited in a court decision." (from the Editor's Introduction)

LANDLORD AND TENANT – MASSACHUSETTS

LAW - UNITED STATES AND MASSACHUSETTS

LAW FIRMS
Chapters include: Prevention and Investigation of Sexual Harassment Claims; What Massachusetts Law Firms Should Consider When Recruiting and Evaluating Associates; Managing Law Firm Employment Practices to Avoid Liability; Law Firm and Individual Partner Liability in Employment Cases; Remedies in Employment Discrimination Suits Against Law Firms.

LAW OFFICES


LAWYERS


This guide discusses whether or not to market your law practice on the Internet and how to set up a site on the Internet.

MENTOR PROGRAM: RESOURCE GUIDE. Chicago, IL: American Bar Association, Senior Lawyers Division, 1996. KF 276.5 M46 1996

The purpose of this guide is to assist in the creation, development or improvement of mentor programs. Some of the topics covered are: discussion of goals, selection and recruitment of mentors, mentor training and activities, special incentives, and program evaluations.

LAYOFF SYSTEMS

LEGAL AID
directory of pro bono programs. Chicago, IL: American Bar Association, Center for Pro Bono , 1996. REFERENCE KF 336 .A3362


LEGAL ETHICS

LEGAL SERVICES

LIMITED LIABILITY

"The purpose of this Title is to assist practitioners in resolving the significant tax issues and business issues that arise in forming, operating, and terminating an entity that operates as an LLC." (from the Preface)

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

MEDIATION

MEDICAL LAW AND LEGISLATION

MEDICAL RECORDS

NARCOTICS LAW
trying drug cases in massachusetts. Editor, Stephanie Page; contributing authors, Juliane Balliro... et al. Boston, MA: MCLE, 1992. RESERVE KFM 2774 .T79

NONPROFIT ORGANIZATIONS - TAXATION
PENSION TRUSTS
The contents include excerpts of Congressional committee reports, the text of ERISA, pertinent sections of the Internal Revenue Code, and an index to ERISA and the IRC.

PERSONAL INJURIES -- MASSACHUSETTS -- TRIAL PRACTICE
HOW TO SETTLE PERSONAL INJURY CASES: A STEP-BY-STEP GUIDE. MaryLin A. Beck, Chair ... [et al.] Boston, MA: MCLE, 1996. RESERVE KFM 2939 .P4 H69 1996

PRACTICE OF LAW
This book, written by a Professor at City University of New York, "looks at (1) the ways in which solo and small-firm lawyers in the NY metropolitan area solve the problems of getting business, organizing work, and serving clients... (2) the expansion of a service-based, post-industrial economy; (3) the need to negotiate time in light of the gender shift in the composition of the professional labor force." (from the Preface)

HOW TO WIN YOUR CASE WITH COMPUTERS: GETTING THE MOST OUT OF YOUR PC OR MACINTOSH. John S. Legasey, Chair ... [et al.] Boston, MA: MCLE, 1996. RESERVE KF 320 .A9 H69 1996

PRODUCTS LIABILITY
"The book provides a succinct summary of state product liability doctrine, rules, and procedures. Information for each state is in the same format, allowing easy comparison across state lines." (from the Introduction)

PUBLIC CONTRACTS

"This monograph is about suspension and debarment: techniques used by the Federal government to protect the integrity of procurement and non-procurement programs." (from the Preface) The chapters cover the procedures and collateral effects of suspension and debarment, techniques to avoid suspension and debarment, and available judicial remedies once suspension or debarment has been imposed.

REAL PROPERTY -- MASSACHUSETTS

SECURITIES

"This new edition provides: an analysis of the legal framework and practical procedures in all types of securities offerings; the regulations of U.S. and foreign broker-dealers, investment advisers, futures commission merchants, commodity trading advisers and commodity pool operators; the regulation of securities activities by banks and the ongoing obligations imposed by U.S. laws on foreign issuers and other participants in the international capital markets." (from the Publisher's Introduction)

SECURITY LAW -- UNITED STATES
SENTENCES (CRIMINAL PROCEDURE)
REPORT TO THE GENERAL COURT. MASSACHUSETTS
SENTENCING COMMISSION. Boston, MA: The
Commission, 1996. RESERVE KFM 2983.2 R47 1996

SEPTIC TANKS – MASSACHUSETTS
TITLE 5 LAND USE CONTROLS REVISITED: EVERY-
THING YOU WANTED TO KNOW ABOUT SEPTIC
SYSTEM REGULATION BUT WERE AFRAID TO ASK.
Joshua M. Alper, Chair ... [et al.] Boston, MA: MCLE,
1995. RESERVE KFM 2759 S3 T58 1995

SEX CRIMES – MASSACHUSETTS
LITIGATING SEXUAL MISCONDUCT CASES:
PLAINTIFFS', LICENSING BOARD PROSECUTORS',
DEFENDANTS' AND EXPERT'S PERSPECTIVES. Pamela K.
Sutherland, Chair ... [et al.] Boston, MA: MCLE, 1996.
RESERVE KFM 2967 S3 L58 1996

SOCIAL SECURITY
SSI AND SSDI CLAIMS STRATEGIES: APPLICATION TO
POSTENTITLEMENT. Raymond A. Cebula, Chair, Mark
KF 3650 C43 1995

STATE COURTS
RECOMMENDED GUIDELINES FOR STATE COURTS
HANDLING CASES INVOLVING ELDER ABUSE. By Lori
A. Stiegel. Washington, DC: ABA: State Justice Institute,
1995. KF 8736 S75 1995

SUMMARY PROCEEDINGS – MASSACHUSETTS
SUMMARY JUDGMENT: HOW TO PREPARE AND HOW
TO PREVAIL. Marjory D. Robertson, Chair ... [et al.]
Boston, MA: MCLE, 1995. RESERVE KFM 2946 S8 S99
1995

TORTS
BUSINESS TORTS AND UNFAIR COMPETITION: A
PRACTITIONER'S HANDBOOK. A. Michael Ferrill, editor.
Chicago: Section of Antitrust Law, American Bar

Some of the topics covered in this book are: interference
torts; commercial disparagement and defamation; fraud
and misrepresentation; misappropriation of trade secrets;
removal and remand; issues relating to parallel litigation.

PREPARING AND TRYING TORT CASES. Faculty, William
J. Thompson... et al. Boston, MA: Massachusetts Bar
Association, 1996. KFM 2938 Z9 P74 1996

TRUSTS AND TRUSTEES
EVERYTHING A FIDUCIARY NEEDS TO KNOW ABOUT
INVESTMENTS: IS A PRUDENT MAN A PRUDENT
INVESTOR? Brian C. Broderick, Chair ... [et al.] Boston,

FIDUCIARY ACCOUNTING: THE CONSOLIDATION OF
TAXATION, ACCOUNTING AND PROBATE LAW.
Richard B. James, Chair ... [et al.] Boston, MA: MCLE,
1995. RESERVE HF 5686 J8 F52 1995

UNDERSTANDING AND USING TRUSTS: LEARN KEY
ISSUES IN DRAFTING INSTRUMENTS. Helen H. Stewart,
chair...et al. Boston, MA: MCLE, 1994. RESERVE KFM
2537 U64 1994

UNDERGROUND STORAGE – LAW AND LEGISLATION
UNDERGROUND STORAGE TANKS: SOURCES OF
LIABILITY, STRATEGIES TO RECOVER COSTS. Thomas
RESERVE KFM 2780 A1 U53 1995
Building A Suffolk Law Community

As members of the Suffolk Law community we are currently involved in one of the most exciting times in the history of our school. Whether you are a student, alumnus, faculty or staff member there is no doubt about it—excitement is in the air! Our new building will shortly be leaving the architect's blue-print pages and locating itself as a landmark on Tremont Street. This will be the physical affirmation of our reputation in the Commonwealth and across the nation as a premier law school. Our continued enthusiasm, interest and involvement will only help ensure continued success of the project.

In conjunction with the construction of the building, the Board of your Law School Alumni Association has undertaken its own construction project—The continuous building and strengthening of our Suffolk Law community. Over the last two years we have organized numerous events. An example of one of these events, held in the Boston area, is called "Networking and Cocktails" which is based on socials sponsored by our Washington DC affiliate. "Networking" presents an opportunity for the whole Suffolk Law community to meet a friend, renew old acquaintances or just exchange information with fellow community members in a casual restaurant atmosphere. We have encouraged other alumni affiliates to organize these popular events in their venues and ask that you consider participating as well.

We believe that the future of our school depends on the strength of our community and we remain committed to this effort. We welcome your suggestions and ideas for our "construction project." With the great numbers of Suffolk alumni across the nation, the potential is there—we must just continue to cultivate it.

Sincerely,

Anthony K. Stankiewicz, JD '87
President of Law School Alumni Association

1932

Wilbur Hollingsworth, JD, received the Thurgood Marshall Award in recognition of passion, principle, and insistence upon excellent legal skills. The Massachusetts public defender program is the successor of a voluntary defenders office that Hollingsworth established 61 years ago in Boston.

1955

William J. Luby, JD, is retiring as judge of Worcester Central District Court.

1957

Robert V. Cauchon, JD, retired Land Court chief justice, joined the Massachusetts Conveyancers Association as a mediator in the dispute resolution program run by its Mediation Services Committee.

1967

Donald L. Connors, JD, an environmental lawyer, has been hired as a consultant to Nantucket's Comprehensive Plan Steering Committee.

Arthur E. Robbins, Concord District Court judge, was honored by the Merrimack County Bar Association as Lawyer of the Year.

1968

Mark I. Berson, JD, a partner in the law firm of Levy & Winer, P.C. of Greenfield, MA, was named to the Family Law Section of the 1997-98 edition of The Best Lawyers in America.

1969

Peter J. Gagne, JD, a partner in the Boston firm of Corwin & Corwin, is serving on the panel of lawyers for the Banker & Tradesman column, "Ask An Attorney."

John C. Stevens, III, JD, was appointed an associate justice of the Essex County Probate Court.
1970

John J. Grant, BA '64, JD, was reappointed first assistant city solicitor for the city of Malden, MA, a position he has held for 16 years.

Bernard Jackvony, JD, has been appointed lieutenant governor of Rhode Island.

Arthur D. Norton, JD, has joined First Montauk Securities Corp., in its newly opened Stamford, CT office, as an affiliate registered representative.

1971

Stephen P. Bik, JD, president of the Massachusetts Conveyancers Association and managing attorney and co-owner of Taylor Abstract Co., has been named one of the 1996 Lawyers of the Year by Massachusetts Lawyers Weekly.

James H. McGuinness, JD, has been named one of the 1996 Lawyers of the Year by Massachusetts Lawyers Weekly.

Arthur D. Norton, JD, has joined First Montauk Securities Corp., in its newly opened Stamford, CT office, as an affiliate registered representative.

1972

Thomas A. Lynch, JD, received the Alumni Service Award and was inducted into the Hendricken Hall of Fame at Bishop Hendricken High in Warwick, RI.

Richard L. Russman, JD, has been reelected to a fourth term as a New Hampshire state senator, representing Derry, Hampstead, Kingston and Plaistow.

1973

John H. Flood, JD, was appointed sheriff of Norfolk County.

Patricia M. Gilbert, JD, was appointed regional attorney in the National Labor Relations Board's office in Winston-Salem, NC.

Eugene F. Kelly, JD, was appointed to Boston's Back Bay Architectural Commission. An expert on affordable housing, he is associated with Keith Construction in Stoughton, MA.

Michael J. Noferi, JD, was a featured speaker at a seminar on long-term care planning sponsored by Milford Meadows, a health care facility.

John C. Revens, Jr., JD, received a Distinguished Alumni Award and was inducted into the Hendricken Hall of Fame at Bishop Hendricken High in Warwick, RI.

1974

Laurence J. Rossi, JD, has been elected president of the board of directors of Central Catholic High School in Lawrence, MA.

1975

Michael C. Creedon, JD, has been named a Massachusetts district court judge.

Francis X. Flaherty, JD, received a Distinguished Alumni Award and was inducted into the Hendricken Hall of Fame at Bishop Hendricken High in Warwick, RI.

Edward P. Freeman, JD, announces the opening of a personal training center, Phase 4 Fitness, in Bernardsville, NJ. He holds a master's degree in sports science from the United States Sports Academy.

Jane V. Hawkes, JD, has been named managing partner of the Worcester, MA, law firm Bowditch & Dewey LLP, making her the first woman to lead a major Massachusetts law firm. While working as a paralegal at Bowditch and Dewey, she was encouraged by Austin Keane, JD '54, to enroll in Suffolk Law School and earn a law degree. In 1975, she became an attorney at Bowditch & Dewey and was named a partner four years later. Hawkes is one of three women partners in the firm and is the only woman to serve on the firm's five-member management committee.

Paul F. Kelly, JD, labor lawyer and co-managing partner of Segal, Roitman & Coleman, was honored by the Labor Guild of Boston with its Cushing Gavin Award for excellence in labor relations.

Kevin J. Reddington, JD, has been inducted into the American College of Trial Lawyers.

Peter T. Zarella, JD, as been appointed a judge on the Connecticut Superior Court.

1976

Jerald G. Fishman, JD, was named president and chief executive officer of Analog Devices. He has been with the company since 1972.

Carmen L. Lopez, JD, has been appointed a Superior Court judge in Connecticut.

William C. Maia, JD, was elected to a second term as chairman of the East Providence, RI school committee.

Did You Know?

Four of the six officers of the Massachusetts Bar Association are Suffolk University Law alumni. Congratulations to:

President Kenneth J. Vacovec, JD '75, of Vacovec, Mayotte & Singer in Newton.

President-elect Marylin A. Beck, JD '76, of Beck Law Offices in Dedham (will become president on September 1, 1997).

Vice-president Edward P. Ryan, Jr., JD '76, of O'Connor & Ryan in Fitchburg.

Secretary Carol A.G. DiMento, JD '77, of DiMento & DiMento in Swampscott.

Connecticut Governor John G. Rowland nominated two Suffolk Law alumni to be judges on the Connecticut Superior Court. Congratulations to:

Carmen J. Lopez, JD '76, a sole practitioner in her own firm since 1977, and former hearing officer for the Commission on Human Rights and Opportunities.

Peter T. Zarella, JD '75, a managing partner of Brown, Paindiris & Zarella, LLP, in Hartford, CT; former chairman of the West Hartford Republican Town Committee; and a delegate to the Republican National Convention in San Diego, CA.
Tom Mundhenk, JD, reports he received an LLM in trial advocacy from Temple University Law School and has relocated to Portland, ME.

John Tierney, JD, was elected United States congressman for the Sixth District and has been appointed to the House Educational and Economic Opportunities Committee. A resident of Salem, MA, he is a partner in the community law firm he helped found more than 18 years ago. Tierney is a trustee of Salem State College, from which he holds a Bachelor's Degree, and where he served as president of the Salem Chamber of Commerce.

Kevin J. Walsh, JD, has joined the Atlanta, GA, office of Holland & Knight, LLP as partner.

Gary C. Crossen, JD, a partner at Foley, Hoag & Eilot and chairman of the Judicial Nominating Council, was named one of the 1996 Lawyers of the Year by Massachusetts Lawyers Weekly.

Carol A.G. DiMento, JD, a partner in the Swampscott, MA, firm of DiMento & DiMento, was elected secretary of the Massachusetts Bar Association.

Michael F. Edgerton, JD '73, LLM, former general counsel to the Trial Court of Massachusetts, was appointed an Essex County Juvenile Court justice.

Charlene Gibney, JD, was named a partner in the Salem, MA, law firm of Whipple and King, P.C.

1978

Michael C. Bolden, JD, has been named executive assistant district attorney for Norfolk County.

Joan E. Camara, JD, is on the continuing education faculty at Dean College in Franklin, MA.

1979

Daniel J. Gilmore, JD, was selected for inclusion in the 1997-98 edition of The Best Lawyers in America. His article, “A Guide to Discovery in Will Contests and Accounting Actions,” was selected by Massachusetts Continuing Education, Inc., for publication in its Best of MCLE Journal.

Martin F. Loughlin, JD '51, LLD, retired federal judge and former chief justice of the New Hampshire Superior Court, served as grand marshal of the 1997 St. Patrick's Day Parade in Manchester, NH.

John D. McElhiney, BA '77, JD, has been named Businessperson of the Year by the Woburn, MA, Business Association.

Frances A. McIntyre, JD, an assistant district attorney for Norfolk County, was named chief of the Massachusetts attorney general's criminal bureau.

John T. Pollano, JD, has joined Caritas Christi Health System as senior vice president and chief financial officer.

Donald B. Powers, JD, a partner in the firm Mead, Bromley & Bishop of Stamford, Connecticut, has opened a satellite office in Ridgefield, CT.

1980

Joseph J. Durant, JD, is chairman of the Hudson, MA, Board of Selectmen.

Rocco V. DiFazio, JD, was the recipient of the Elderpreneur of the Year Award given by the South Shore Chamber of Commerce to honor those individuals age 55 and over who have successfully initiated a new program or enterprise. DiFazio, 72, a former Weymouth, MA, police prosecutor, opened a law practice after he retired at age 62.

John Q. Kelly, JD, served as one of the lead attorneys in the O.J. Simpson civil trial. A former prosecutor from the New York District Attorney's Office in Queens, he is the New York-based lawyer for the estate of Nicole Brown Simpson.

1981

Patricia A. Day, JD, has joined the Boston law firm of Sherin and Lodgen LLP.

Thomas G. Gennis, JD, spoke at the Malden Hospital, as part of its senior education program. He practices in Natick, MA, and specializes in Medicaid eligibility and reimbursement.
Barbara L. Worthen, JD, has joined First Data Investor Services in Boston as executive vice president of legal administration.

Christine Sandor Filip, JD, is the author and editor of Effective Marketing for Lawyers, a book published by the New York State Bar Association in 1996. According to Filip, the 200-page book "serves as a 'graduate course' in such marketing areas as ethical advertising, networking, producing brochures and using technology." It is aimed primarily at attorneys working in small law firms and at solo practitioners who traditionally do not have the benefit of in-house marketing support. Filip is president of The Success Group, a New York-based marketing and public relations consulting firm for attorneys. She writes a monthly marketing column for New Jersey Lawyer.

Marianne C. Hinkle, JD, director of the Norfolk County district attorney's domestic violence and sexual assault units, was named one of the 1996 Lawyers of the Year by the West Side Social Club in Lowell, MA.

John Mackey, JD, was elected president of the Everett, MA, Kiwanis Club.

Robert K. Rancke, MPA '77, JD, was appointed assistant vice president and counsel in the corporate matters section of the law division at Massachusetts Mutual Life Insurance.

Mary Winstanley O'Connor, JD, received the Meritorious Service Award from the New England Region of Antiochian Churches.

1983

Patricia A. Dowling, JD, was reelected to the Massachusetts Governor's Council.

Philip F. Mulvey, III, JD, has been appointed assistant vice president and counsel at Sun Life Assurance Company of Canada.

Kevin Murphy, JD, was elected a Massachusetts state representative from Lowell's 19th Middlesex District.

Stephen A. Roach, JD, announces the relocation of his law office, Roach & Wise, to State Street in Boston.

Stephen Sedensky, JD, has been granted a one-year fellowship at the American Prosecutors Research Institute in Washington, DC, to lead a program that teaches the country's prosecutors how to try child abuse cases. This is the first time such a program has been offered in the United States.

1984

Christopher J. Behan, JD, has been named assistant city solicitor for Newport, RI.

Ian Crawford, JD, managing partner of Todd & Weld and chairman of the Massachusetts Practice and Procedure Committee of the Boston Bar Association's Litigation Section, was the organizer of the Superior Court bench/bar conference held at the Parker House in Boston under the auspices of the Boston Bar Foundation's CLE program.

1985

Judith Babb, JD, was chosen Citizen of the Year by the West Side Social Club in Wakefield, MA.

Sarah Carter, JD, has joined the Cambridge, MA, office of Hunneman & Company/Coldwell Banker as a residential sales associate.

Matthew C. Donahue, JD, received a service award from the Lowell, MA, Hunger/Homeless Commission for leadership in Lowell's Health Summer Program.

Eva M. Mancuso, JD, managing partner of Hamel, Wader, Allen & Collins, was elected president of the Rhode Island Trial Lawyers Association. She is the first woman elected under its new charter formed in the late 1970s.

William S. Patsos, Jr., JD, has been named agency counsel by First American Title Insurance Co.
1986

Howard M. Brown, JD, a partner in the law firm of Stroock and Stroock and Lavan, has been appointed to the advisory board of the Massachusetts Commission Against Discrimination.

James W. Kachadoorian, JD, has been named a partner at Garbarini & Scher, a midtown Manhattan civil litigation firm.

Frederick M. Misilo Jr., JD, has joined the Worcester, MA, law firm of Rackemann, Sawyer & Brewster.

Donald R. Pinto, Jr., JD, has become a director and shareholder of the Boston firm of Rackemann, Sawyer & Brewster where he has been a member of the litigation department since 1988.

1987

Stuart L. Bergman, JD, has been named assistant vice president of individual marketing at Phoenix Home Life Mutual Life Insurance Company.

Richard K. Donahue, Jr., JD, was appointed director of the Middlesex Superior Court conciliation program.

Cheryl Jacques, JD, was reelected a Massachusetts state senator.

Carol H. Jordan, JD, senior investigator with the Pension and Welfare Benefits Administration of the U.S. Department of Labor, was honored by that department for her work in saving millions of dollars in the pension fund area.

Sara A. Newhall, JD, has joined the Marblehead, MA, law firm of Ellen A. Peterson, as an associate.

Anthony K. Stankiewicz, JD, has been promoted to an exchange officer and vice president of listings, member services and government relations at the Boston Stock Exchange, Inc.

1988

Hugh R. Curran, JD, a civil litigator with the Boston firm of Gilberg, Kuent & Kieman, served as chairman of the first Boston stint for Swim Across America Inc., a non-profit group that raises funds for cancer research by sponsoring swimming events nationwide.

Michael D. Joyce, JD, senior associate in the Quincy, MA, law firm of Murphy, Hesse, Toomey and Lehane, has been elected president of the Greater Boston Chapter of the International Society of Certified Employee Benefit Specialists.

Joseph D. Leverone, JD, has become a director of the New Hampshire law firm of McLane, Graf, Raulerson & Middleton, PA.

Tim D. Norris, JD, has joined the law firm of Mirick, O'Connell, DeMallie & Lougee, LLP, as an associate in the labor department.

John E. Toomey, JD, chief of police in Swampscott, MA, was elected secretary of the Greater Boston Police Council.

1989

Doreen DiMento Farthing, JD, is a corporate attorney at Bay Networks, Inc., a high-tech company in Billerica.

Kara M. Lucciola, JD, a Massachusetts assistant attorney general, was chosen to participate in the Group Study Exchange Program of the Rotary Foundation of Rotary International.

Dina Beach Lynch, JD, has been named chief executive officer of the Boston-based Strategic Conflict Management Associates.

Theos D. McKinney, III, JD, was appointed associate counsel of human resources at Astra USA, a subsidiary of the Swedish pharmaceutical company Astra AB.

Steven C. Panagiotakos, JD, was elected Massachusetts state senator for the First Middlesex District.

Susan O'Rourke von Struensee, JD, reports that she has been appointed the Massachusetts liaison for the American Trial Lawyers Association Women's Caucus, and has received the Guerberman Teaching Fellowship at Brandeis University. Also, she has been appointed amicus counsel for the American Trial Lawyers Association in a matter challenging the constitutionality of medical malpractice statutes of repose.

Sheldon S. Toplitt, JD, announces the opening of his general practice law firm in Needham, MA.

1990

Bruce Tarr, BSBA '87, JD, a Massachusetts state senator from the First Essex and Middlesex district, was named a 1996 Legislator of the Year by the Massachusetts Municipal Association.

Mark P. Welch, JD, has been appointed solicitor of North Providence, RI.

1991

Adam G. Cohen, JD, reports that he has joined the Boston law firm of Cetrulo & Capone as an associate.

Cathleen Lahart Kinne, JD, has been appointed admissions officer at the Berkshire School, a preparatory school in Sheffield, MA.

Lisa J. Marino, JD, is a principal of the Newton, MA, law firm of Wilson, Marino and Bonnevie, PC.

Sean P. Murphy, JD, has been appointed city editor at the Boston Globe.

Naomi R. Thompson, JD, has joined the Suffolk County District Attorney's staff assigned to West Roxbury District Court.
Laura L. White, JD, is with the Boston law firm of Riemer & Braunstein.

1992

Sharon F. Fearey, JD, an associate with Winokur, Winokur, Serkey & Rosenberg, was named as one of the 1996 Lawyers of the Year by Massachusetts Lawyers Weekly.

Kevin Fountain, JD, was promoted to associate professor in the graduate school at Johnson & Wales University.

Mel E. Passarelli, JD, has joined MAI Technologies, Inc., as vice president of sales and marketing.

Michael Fedele, JD, is the town assessor for Windham, NH.

Margarette Granduit, JD, announces the opening of a law firm, Marius & Granduit, Inc. in Dorchester, MA.

Ronald J. Horta, JD, has joined the law firm of Partridge, Snow & Hahn as an associate.

Elizabeth A. McGrath, JD, has joined the New Hampshire law firm of McLane, Graf, Raulerson & Middleton, P.C. as an associate in the tax department.

Eileen M. Quill, JD, has been appointed a sales associate in the Winchester, MA, office of Hunneman & Company/Coldwell Banker.

1993

Peter J. Cura, JD, has joined the law firm of Peabody & Brown as an associate in the property and finance department.

Bruce S. Lipsey, JD, has been appointed senior associate in the new Hanover, MA, office of Spillane & Epstein, P.C.

Rosa Mazzeo, JD, has joined the Boston law offices of Edwards & Angell as an associate in the real estate group.

Kelly-Ann Buttiglieri, JD, joined the West Concord, MA, law office of Marion S. Lill as an associate.

Christopher S. Daly, JD, has joined the Boston law firm of Nutter, McClennen & Fish, LLP as an associate in the business department.

1995

Wayne Carroll, JD, is presently pursuing a 10-month Fellowship in German law administered by the Deutscher Akademischer Austauschdienst (DAAD). Through the Juristenprogram Carroll will be spending three months at the University of Tuebingen's Faculty of Law, followed by five months at the Ministry of Justice in Duesseldorf, and three months working for a German law firm. After graduation Carroll worked as an intern in the Office of the General Counsel, Office of the U.S. Trade Representative in Washington DC, and later for the Litigation Department at Hale and Dorr in Boston. He also hopes to be admitted as a solicitor in England and Ireland in 1997.

Lauren E. Cascio, JD, is with the Hingham, MA, law office of Robert Hillson.

Brenda K. Elias, JD, has been appointed staff attorney at the Montana Advocacy Program, Inc., a protection and advocacy organization headquartered in Helena, MT.

Seth E. Ellis, JD, has joined the Miami Beach, FL, law firm of Therrel Baiden & Meyer Weiss as an associate.

Robert B. Gibbons, JD, was named an associate in the litigation department of Mirick, O'Connell, DeMallie & Lougee, LLP.

Daniel F. Graves, JD, has been appointed an assistant district attorney in the Northwestern District Attorney's Office in Greenfield, MA.

Julio Hemando, JD, is an assistant district attorney for Norfolk County.

Lindsay Gage McGuinness, JD, is a patent attorney for Digital in Maynard, MA.

James G. McManus, JD, is an associate in the Boston firm of Michael A. Murphy & Associates.

Richard M. Power, JD, has been named a legislative aide to State Representative John Rogers.

John W. E. Rockwood, JD, has joined Corcoran Law Offices, LLP in Boston as an associate.

Cynthia A. Welter, JD, has joined the Worcester, MA, law firm of Shumway, Giguere, Byrne, Fox & Aloise.

1996

Michael A. Costello, JD, served as the Merrimack Valley coordinator for the election campaigns of President William Clinton, Senator John Kerry and Congressman John Tierney.

David Gabrieli, JD, has joined the Seattle, WA, law firm of Foster Pepper & Shefelman as an associate.

Heather W. Gebbia, JD, is associated with the Maine law firm of Verrill & Dana.

Kevin P. Rauseo, JD, has joined the law firm of Phillips, Gerstein, Holber & Channen in Haverhill, MA.
We want to hear about you! If you recently began a new job, earned a degree, married or celebrated the birth of a child, or have any news to share with your fellow alumni, please fill out this form and send it in. We'll include your news in the Class Notes section of the next issue.

Please Print:

Name

Former Name

Degree(s) / Year(s)

Home Address

City

State

Zip

Phone

Title

Business Address

City

State

Zip

Phone

Mail to:
Class Notes, Suffolk University Law School
Development Office, 8 Ashburton Place,
Boston, MA 02108-2770

You may also e-mail letters to
alumni@admin.suffolk.edu.
(When corresponding by e-mail, please include your name and phone number so that we can confirm this information with you.)

Suffolk University expresses sympathy to the families and friends of these alumni.

In Memoriam
Edward D. Mahoney, JD ’32
Antone F. Souza, Jr., JD ’32
Byron Wright, JD ’34
Raymond Given, JD ’37
Julius Shershow, JD ’37
John W. Beckshaw, JD ’38
Colonel Paul J.T. Leahy, JD ’38
Francis E. White, JD ’38
John G. Burke, JD ’39
Christian J. Stier, JD ’39
James H. Quirk, Sr., JD ’40
Michael J. Ryan, JD ’40
J. Joseph Tansey, JD ’40
John L. Faherty, JD ’41
Harold L. Hickox, Jr., JD ’41
John Kasper, Jr., JD ’41
Manning A. Williams, JD ’41
John D. Bismith, JD ’50
A. R. Paul Wilson, JD ’53
Herbert F. Patriquin, JD ’55
George S. Wallace, JD ’55
Edward D. O’Brien, Jr., JD ’65
Gerard F. Brocklesby, JD ’69
Michael S. Hargreaves, JD ’69
Donald D. Deren, JD ’74
Roberta Harding, JD ’77
Ann B. Eldridge Grant, JD ’80
Michael J. Ward, Jr., JD ’80
Raymond S. Fish, JD ’82
Robert E. Kirby, JD ’87
Christopher Hayes, JD ’91
Angelo N. Scangas, DGS (Hon) ’93